TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 465

WALLACE R. FARRINGTON, GOVERNOR OF THE TERRITORY OF HAWAII; WILLIAM B. LYMER, ATTORNEY GENERAL, ETC., ET AL., PETITIONERS,

vs.

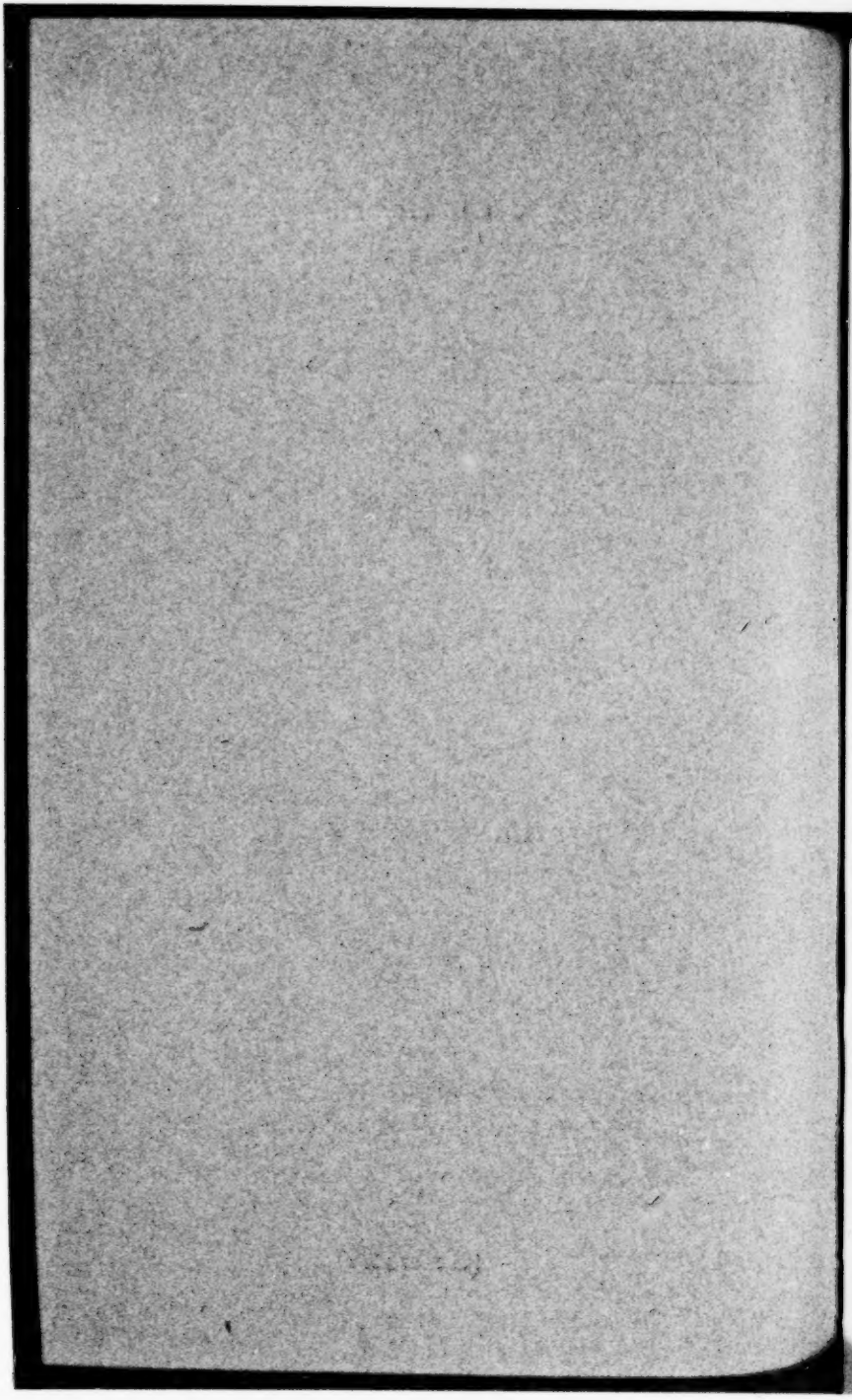
T. TOKUSHIGE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 21, 1926

CERTIORARI GRANTED OCTOBER 18, 1926

(32,032)



(32,032)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 465

WALLACE R. FARRINGTON, GOVERNOR OF THE TERRITORY OF HAWAII; WILLIAM B. LYMER, ATTORNEY GENERAL, ETC., ET AL., PETITIONERS,

vs.

T. TOKUSHIGE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Record from district court of the United States, Territory of Hawaii	1
Docket entries	1
Bill of complaint	4
Exhibit "A" Attached to Bill of Complaint—Laws relating to foreign language schools, being Act 30 of the Session Laws of 1920	56
Exhibit "B" Attached to Bill of Complaint—Resolution relating to foreign language schools	66
Summons and marshal's return	68
Temporary restraining order	71
Motion to dissolve or modify restraining order	73
Affidavit of Wm. B. Lymer	80
Affidavit of Henry B. Schwartz	84
Notice of motion to dissolve or modify restraining order	88
Notice of motion for preliminary injunction	89

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 30, 1926

Names of Original Parties:

T. Tokushige et al., plaintiffs.

Wallace R. Farrington et al., respondents.

Dates of Filing of Pleadings:

June 13, 1925: Plaintiffs' bill of complaint.

Service of Process:

June 13, 1925: Subpoena issued and delivered to the United States Marshal.

Time When Proceedings Were Had:

June 24, 1925: Order of continuance for hearing on motion to dissolve or modify restraining order.

June 25, 1925: Proceedings. Argument on motion to dissolve or modify restraining order.

June 26, 1925: Proceedings. Further argument on motion to dissolve or modify restraining order.

June 29, 1925: Proceedings. Further argument on motion to dissolve or modify restraining order. [2]

June 30, 1925: Proceedings. Further argument on motion to dissolve or modify restraining order.

July 1, 1925: Proceedings. Further argument on motion to dissolve or modify restraining order.

July 2, 1925: Proceedings. Order granting motion to dissolve or modify restraining order.

July 7, 1925: Order of continuance.

July 8, 1925: Proceedings. Order allowing motion to strike and preliminary injunction.

July 14, 1925: Order of continuance.

July 17, 1925: Order of continuance.

July 21, 1925: Acknowledgment of service of temporary injunction and exceptions.

Date of Filing Appeal Documents:

July 27, 1925: Petition for appeal, order allowing appeal, appeal bond, assignment of errors, praecipe for transcript of record and citation issued.

Proceedings had before the Honorable J. T. DeBolt, Judge. [3]

CERTIFICATE OF CLERK AS TO THE ABOVE STATEMENT.

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties thereto, the several dates when the respective pleadings were filed; an account of the service of process, the time when proceedings were had and the name of the Judge presiding and the date of filing appeal documents.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of August, A. D. 1925.

[Seal] WM. L. ROSA,
Clerk, United States District Court, Territory of Hawaii. [4]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R.

Farrington et al., Defendants. Plaintiffs' Bill of Complaint. Filed June 13/25, at 10 o'clock and 48 Minutes A. M. (S.) Wm. L. Rosa, Clerk. By ————, Deputy Clerk. Lightfoot & Lightfoot and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs. [5]

In the District Court of the United States in and for the District and Territory of Hawaii.

In Equity.

BILL FOR AN INJUNCTION.

EQUITY No. 272.

T. TOKUSHIGE, K. TANAKA, S. SASAKI, Members of Aiea Japanese Language School, an Unincorporated Association, F. KOOCHI, M. NISHIGAYA, S. YASHINA, Members of Chuo Gakuen, an Unincorporated Association, T. HASHIMOTO, K. KINOSHITA, T. NAKANO, Members of Ewa Shion Japanese Language School, an Unincorporated Association, M. OKAMOTO, K. SAKAI, T. ENOMOTO, Members of Haleiwa Taisho Japanese Language School, an Unincorporated Association, K. YOSHIMURA, T. HOKUSHIN, I. AOKI, Members of Hawaii Japanese Girls' School, an Unincorporated Association, K. KIMURA, M. SAKAI, S. KIYOHARA, Members of Heeia Japanese Language School, an Unincorporated Association, K. KANEMARU, C. NAKATA, Z.

TOYAMA, Members of Kahaluu Japanese Language School, an Unincorporated Association, KWANICHI MIYAJI, NISAKU IWASAKI, S. HISHINUMA, Members of Kailua Japanese Language School, an Unincorporated Association, M. SORANAKA, E. SATO, N. FUKUDA, Members of Kakaako Japanese Language School, an Unincorporated Association, U. YAMANE, T. TANIKAWA, D. NAKAYAMA, Members of Kalihi Japanese Language School, an Unincorporated Association, K. OKIMURA, J. WATANABE, A. NAKANO, Members of Manoa Japanese Language School, an Unincorporated Association, Y. KOBAYASHI, T. HIRATA, S. YAMAGUCHI, Members of Moiliili Japanese Language School, an Unincorporated Association, T. TSUJI, F. SAKUMA, I. DEWA, Members of Palama Gakuen, an Unincorporated Association, S. UYEDA, D. KAWAMURA, S. NAKASHIMA, Members of Palama Japanese Language School, an Unincorporated Association, W. EUFUJI, O. HAMAMOTO, K. NAKAGAWA, Members of Pearl City Japanese Language School, an Unincorporated Association, N. OBARA, J. KAYA, S. TOYOTA, Members of Punaluu Japanese Language School, an Unincorporated Association, T. KANNO, T. MAEDA, Y. NAKAMURA, Members of Puuloa Japanese Language

School, an Unincorporated Association, T. YAMARAKI, Y. TANOUYE, N. KOGE, Members of Toyo Gakuen, an Unincorporated Association, U. URANAKA, K. TOKUMOTO, T. ITO, Members of Wahiawa Gakuen, an Unincorporated Association, G. GINDA, H. YAMASHIRO, K. KAWAMURA, Members of Waiahole Japanese Language School, an Unincorporated Association, H. MIURA, U. MATSUO, M. OKAMOTO, Members of Waialua Japanese Language School, an Unincorporated Association, K. IBARAKI, T. MURAKAMI, N. AOKI, Members of Waikiki Japanese Language School, an Unincorporated Association, [6] M. TASAKA, T. IWANAGA, Members of Hawaii Japanese High School, an Unincorporated Association, M. TASAKA, T. IWANAGA, Members of Fort Educational Home, an Unincorporated Association, T. IKEDA, T. WATANABE, T. TOSHIYUKI, Members of Central Kona Japanese Language School, an Unincorporated Association, C. KOYA, K. YOKOYAMA, T. OKAJI, Members of Hakalau Japanese Language School, an Unincorporated Association, T. TAKAKI, T. GOUSHI, F. UYEHANA, Members of Halawa Japanese Language School, an Unincorporated Association, G. SUZUKI, J. MAEDA, S. OKINISHI, Members of Hiilea Japanese Language School, an Unincorporated Association, B. TAKEDA, Y. HATA,

I. IKEDA, Members of Hilo Educational Home, an Unincorporated Association, B. TAKEDA, Y. HATA, I. IKEDA, Members of Hilo Japanese High School, an Unincorporated Association, T. HARA, F. KUSUMOTO, I. ISONO, Members of Hilo Practical School, an Unincorporated Association, T. YONEMOTO, K. IRIE, K. INOKOJI, Members of Honokaa Japanese Language School, an Unincorporated Association, A. NANBU, K. KINOSHITA, K. SHIKASHO, Members of Honomakau Japanese Language School, an Unincorporated Association, C. MIYAKAWA, M. TANIGUCHI, K. TOKUMARU, Members of Honomu Gakuen, an Unincorporated Association, M. NAKANO, YAMADA, S. SASAKI, Members of Honuapo Japanese Language School, an Unincorporated Association, K. SAKAMOTO, T. ENDO, T. HIGASHI, Members of Hookena Japanese Language School, an Unincorporated Association, K. OKAMOTO, N. NAKAGAWA, T. TANIGUCHI, Members of Kaapahu Japanese Language School, an Unincorporated Association, G. HIGASHI, K. MONMA, K. NITTA, Members of Kapoho Japanese Language School, an Unincorporated Association, T. YOSHIDA, Y. HAMASAKI, H. IURA, Members of Kapplena Japanese Language School, an Unincorporated Association, Y. MANEKI, T.

TANOUYE, K. FUJITA, Members of Kaumana Japanese Language School, an Unincorporated Association, K. IKEDA, Y. NAGATA, Members of Keaukou Educational Home, an Unincorporated Association, S. UESUGI, C. KAMIMURA, R. FURUSHO, Members of Kohala Japanese Language School, an Unincorporated Association, B. TAGUCHI, Y. ENDO, T. SUGAHARA, Members of Kukaiau Japanese Language School, an Unincorporated Association, O. HIRAKI, K. NARAKI, S. ITO, Members of Kurtistown Japanese Language School, an Unincorporated Association, T. YAMAMOTO, A. KOMATSU, S. TAKAKI, Members of Naalehu Japanese Language School, an Unincorporated Association, Y. TAKAHATA, C. INOUYE, I. ARIYOSHI, Members of Napoopoo Japanese Language School, an Unincorporated Association, M. SHIGAKI, T. MATSUDA, R. MAEYAMA, Members of Ninole Japanese Language School, an Unincorporated Association, [7] S. HIRASHIMA, M. TAMURA, I. HOSHIDA, Members of Niulii Japanese Language School, an Unincorporated Association, T. OTO, Y. AKIYAMA, I. KASAI, Members of Olaa 9-Mile Gakuen, an Unincorporated Association, K. YAMADA, T. YANAGISAWA, A. NAKAMURA, Members of Onomea Japanese Language School, an Unincorporated Association, K. YAMAMOTO, D.

MIYAGAWA, H. OHARA, Members of Ookala Japanese Language School, an Unincorporated Association, T. MIYASAKI, T. NISHIYAMA, B. HIGA, Members of Paauilo Japanese Language School, an Unincorporated Association, T. KOIKE, K. MAEDA, U. MURAKAMI, Members of Pahala Educational Home, an Unincorporated Association, T. MARUMOTO, D. TOMINAGA, S. KITSUKI, Members of Pahala Japanese Language School, an Unincorporated Association, J. OZAKI, A. MIYABARA, M. HAYASHIKAWA, Members of Pahoa Japanese Language School, an Unincorporated Association, R. TAMAMOTO, R. SUZUKI, H. NAGAI, Members of Papaaloa Japanese Language School, an Unincorporated Association, T. MORIGAKI, K. SAKAMOTO, J. ISHIDA, Members of Papaikou Educational Home, an Unincorporated Association, I. KUROGAWA, M. HAYAKAWA, S. KIKUCHI, Members of Papaikou Japanese Language School, an Unincorporated Association, S. OGAWA, R. MORIMOTO, K. OTOCHI, Members of Piihonua Japanese Language School, an Unincorporated Association, S. YOSHIDA, K. HAYASHIDA, H. MIYAMOTO, Members of Wailea Japanese Language School, an Unincorporated Association, K. ORIMOTO, J. OGATA, D. UAMAGUCHI, Members of Wainaku Kyoritsu Japanese Language School, an Unincorpo-

rated Association, R. SHIMOTSU, I. FUJIKAWA, Y. MURAI, Members of Wainaku Jodo Mission Japanese Language School, an Unincorporated Association, M. FUJIMITSU, T. NOMURA, R. KAMEBAYASHI, Members of Anahola Japanese Language School, an Unincorporated Association, S. MIURA, I. NAKATSUKA, K. YOKOTA, Members of Hanalei Japanese Language School, an Unincorporated Association, K. OKIMOTO, J. MIURA, J. S. TERAOKA, Members of Kapaa Educational Home, an Unincorporated Association, G. OGATA, T. YOSHIMURA, K. URABE, Members of Kapaa Nissin Japanese Language School, an Unincorporated Association, N. MIYASAKI, K. OGATA, I. ARIIZUMI, Members of Kealia Educational Home, an Unincorporated Association, T. SHIMATSU, S. TOGIOKA, S. YAMASHITA, Members of Kekaha Japanese Language School, an Unincorporated Association, T. YOSHIMOTO, E. SAIKI, M. SAIKI, Members of Kilauea Japanese Language School, an Unincorporated Association, S. MURONAKA, S. EBATA, S. MATSUMOTO, Members of Koloa Japanese Language School, an Unincorporated Association, K. OKINAGA, T. YOSHI, K. HORIBE, Members of Koolau Japanese Language School, an Unincorporated Association, [8] J. MASHITA, K. MATSUMURA, M. KUNIOKA, Members of Lawai Japanese

Language School, an Unincorporated Association, T. UEDA, M. KAWATA, N. AKAZAWA, Members of Makaweli Japanese Language School, an Unincorporated Association, J. MATSUI, S. HIGASHI, N. KAWAMURA, Members of Makaweli Camp 2 Japanese Language School, an Unincorporated Association, S. YOSHIMASU, M. TANAKA, O. D. AKINORI, Members of Haiku Japanese Language School, an Unincorporated Association, K. MURANAKA, G. TOKUNAGA, S. OSHIRO, Members of Mana Japanese Language School, an Unincorporated Association, M. HORIUCHI, Y. SATSUMA, M. TOMA, Members of Honokowai Japanese Language School, an Unincorporated Association, T. KURAKAKE, K. MIHO, H. KINOSHITA, Members of Kahului Japanese Language School, an Unincorporated Association, U. HIGA, T. HANZAWA, J. IZAWA, Members of Kaupakalua Japanese Language School, an Unincorporated Association, I. FUJIBAYASHI, K. NAGATA, K. OKAMOTO, Members of Kula Japanese Language School, an Unincorporated Association, J. MURATA, J. SATO, G. MASUDA, Members of Lahaina Dowa Educational Home, an Unincorporated Association, I. TOYAMA, K. S. MATSUI, K. UMEMOTO, Members of Makawao Japanese Language School, an Unincorporated Association, S. KAWASHIMA, M. TAKAHASHI,

S. KURISU, Members of Olowalu Japanese Language School, an Unincorporated Association, S. CHIKAMORI, S. WATANABE, Y. FUKUROKU, Members of Peahi Japanese Language School, an Unincorporated Association, K. WATANABE, K. TAKAHAMA, S. YAMASAKI, Members of Wahikuli Japanese Language School, an Unincorporated Association, M. UNO, H. KANESHINA, T. HIRAI, Members of Waihee Japanese Language School, an Unincorporated Association, R. SATO, S. FURUKAWA, T. SONODA, Members of Waikapu Japanese Language School, an Unincorporated Association, G. KAWAHARA, K. YAMAMOTO, Y. YOSHIDA, Members of Wailuku Educational Home, an Unincorporated Association, on Behalf of Themselves as Members of Said Unincorporated Associations, on Behalf of All Other Members of Said Unincorporated Associations, on Behalf of the Teachers Employed by Said Unincorporated Associations, on Behalf of the Parents of Children Attending Said Schools and on Behalf of All the Other Japanese Language Schools Similarly Situated Who may Come In and Share the Costs of These Proceedings,

Plaintiffs,

vs.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LY-

MER, Attorney [9] General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Defendants.

PLAINTIFFS' BILL OF COMPLAINT.

To the Honorable, the Presiding Judges of the United States District Court in and for the District and Territory of Hawaii:

Come now the plaintiffs above named and complaining of Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, defendants above named, respectfully show unto your Honors as follows:

I.

That the defendant Wallace R. Farrington is the duly appointed, qualified and acting Governor of the Territory of Hawaii; that the defendant, William B. Lymer, is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii, and the defendant, Willard E. Givens, is the duly appointed, qualified and acting Superintendent of Public Instruction of the Territory of Hawaii and as such Superintendent is the executive officer of the Department of Public Instruction of the Territory of Hawaii. That each of said defendants is a resident and citizen of the Territory of Hawaii.

II.

That all of the members of the associations here-

inafter mentioned, including those herein specifically mentioned as plaintiffs, the teachers in said schools and the parents of children attending said schools are residents of the Territory of Hawaii and are subjects of the Emperor of Japan. That the various unincorporated associations hereinafter mentioned were [10] conducting schools for the education of children in the Japanese language long prior to the enactment of the Law of 1920 as hereinafter referred to and they are now conducting said schools.

III.

That this is a suit of a civil nature in equity arising under the Constitution and Laws of the United States of America and the Treaty of Commerce and Navigation between the United States of America and the Empire of Japan. The matter in controversy exceeds the sum of Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

IV.

That there are, at this time, in the Territory of Hawaii, about One Hundred Forty-six (146) schools, all voluntary unincorporated associations similarly situated to said plaintiffs; that said schools are owned and conducted by more than Five Thousand (5,000) persons; that the property belonging to said schools and used and employed in the conduct thereof exceeds in value the sum of Two Hundred Fifty Thousand Dollars ($250,000.00); that the property of plaintiffs and the property of said other schools has all been acquired and said schools have been and are being maintained and supported entirely by private funds paid, contributed and/or

raised by the members of said schools; that there are about Twenty Thousand (20,000) pupils enrolled in said schools and about Three Hundred (300) teachers employed in giving instruction therein; that in the kindergarten grades of the schools conducted by plaintiffs and of said other schools throughout the Territory the instruction is confined to simple songs and exercises and the playing of games; that in the various grades in the schools conducted by plaintiffs and by said other schools, the instruction is confined to the teaching of the Japanese language and the [11] various methods of writing the same. That neither in said kindergarten nor in said grades of said schools is anything taught which is unAmerican or contrary to the ideals of democracy, but on the other hand, the teaching in said schools inculcates, and is intended to inculcate, in the minds of the pupils attending the same, a respect for the institutions and laws of the United States of America.

V.

That this petition is filed by the said plaintiffs in their own behalf and on behalf of the other owners of said schools; on behalf of the teachers employed in said schools, on behalf of the parents of the children attending said schools, and on behalf of all other Japanese language schools similarly situated, who may come in and share the costs of these proceedings.

VI.

That T. Tokoshige, K. Tanaka and S. Sasaki are members of the Aiea Japanese Language School, an

unincorporated association; that there are 143 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are 100 pupils attending said school of whom 31 are in the first grade and 50 are in the second grade; that the said unincorporated association is the owner of property worth $400.00.

That F. Koochi, M. Nishigaya and S. Yashina are members of the Chuo Gakuen, an unincorporated association; that there are 500 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association [12] employs 10 teachers; that there are 390 pupils attending said school of whom 90 are in the kindergarten, 165 are in the first grade and 135 are in the second grade; that the said unincorporated association is the owner of property worth $20,000.00.

That T. Hashimoto, K. Kinoshita and T. Nakano are members of the Ewa Shion Japanese Language School, an unincorporated association; that there are 48 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 107 pupils attending said school of whom 26 are in the kindergarten and 10 are in the second grade; that the said unincorporated association is the owner of property worth $120.00.

That M. Okamoto, K. Sakai and T. Enomoto are members of the Haleiwa Taisho Japanese Language School, an unincorporated association; that there are 119 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are now 97 pupils attending said school of whom 17 are in the kindergarten, 41 are in the first grade and 39 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That K. Yoshimura, T. Hokushin and I. Aoki are members of the Hawaii Japanese Girls' School, an unincorporated association; that there are 115 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 5 teachers; that there are 114 pupils attending said school of whom 20 are in the first grade [13] and 25 are in the second grade; that the said unincorporated association is the owner of property worth $7,500.00.

That K. Kimura, M. Sakai and S. Kiyohara are members of the Heeia Japanese Language School, an unincorporated association; that there are 51 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 105 pupils attending said school of whom 27 are in the first grade and 13 are in the second

grade; that the said unincorporated association is the owner of property worth $1,000.00.

That Kinzo Kanemaru, C. Nakata and Z. Toyama are members of the Kahaluu Japanese Language School, an unincorporated association; that there are 52 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 64 pupils attending said school of whom 13 are in the first grade and 10 are in the second grade; that the said unincorporated association is the owner of property worth $300.00.

That K. Miyaji, N. Iwasaki and S. Hishinuma are members of the Kailua Japanese Language School, an unincorporated association; that there are 53 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 64 pupils attending said school of whom 17 are in the first grade and 6 are in the second grade; that the said unincorporated association is the owner of property worth $1,750.00. [14]

That M. Soranaka, E. Sato and N. Fukuda are members of the Kakaako Japanese Language School, an unincorporated association; that there are 110 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 123 pupils attending said school of

whom 10 are in the kindergarten, 25 are in the first grade and 20 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That U. Yamane, T. Tanigawa and D. Nakayama are members of the Kalihi Japanese Language School, an unincorporated association; that there are 150 members of said unincorporated association, which members are owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 259 pupils attending said school of whom 57 are in the first grade and 44 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That K. Okimura, J. Watanabe and A. Nakano are members of the Manoa Japanese Language School, an unincorporated association; that there are 90 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 117 pupils attending said school of whom 40 are in the first grade and 43 are in the second grade; that the said unincorporated association is the owner of property worth $3,000.00. [15]

That Y. Kobayashi, T. Hirata and S. Yamaguchi are members of the Moiliili Japanese Language School, an unincorporated association; that there are 300 members of said unincorporated association, which members are the owners of the property be-

longing to said unincorporated association; that said unincorporated association employs 7 teachers; that there are 634 pupils attending said school; that the said unincorporated association is the owner of property worth $5,540.00.

That T. Tsuji, F. Sakuma and I. Dewa are members of the Palama Gakuen, an unincorporated association; that there are 319 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 7 teachers; that there are 585 pupils attending said school of whom 56 are in the kindergarten; that the said unincorporated association is the owner of property worth $5,000.00.

That S. Uyeda, D. Kawamura and S. Nakashima are members of the Palama Japanese Language School, an unincorporated association; that there are 460 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 8 teachers; that there are 714 pupils attending said school of whom 58 are in the kindergarten, 160 are in the first grade and 125 are in the second grade; that the said unincorporated association is the owner of property worth $5,000.00.

That U. Uefuji, O. Hamamoto and K. Nakagawa are members of the Pearl City Japanese Language School, an unincorporated association; that there are 70 members of said unincorporated association, which members are the owners of the property be-

longing [16] to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 44 pupils attending said school of whom 26 are in the first grade and 18 are in the second grade; that the said unincorporated association is the owner of property worth $300.00.

That N. Obara, J. Kaya and S. Toyota are members of the Punaluu Japanese Language School, an unincorporated association; that there are 31 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 36 pupils attending said school of whom 7 are in the kindergarten, 10 are in the first grade and 5 are in the second grade; that the said unincorporated association is the owner of property worth $750.00.

That T. Kanno, T. Maeda and Y. Nakamura are members of the Puuloa Japanese Language School, an unincorporated association; that there are 30 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 73 pupils attending said school of whom 8 are in the second grade; that the said unincorporated association is the owner of property worth $300.00.

That T. Yamasaki, Y. Tanouye and N. Kage are members of the Toyo Gakuen, an unincorporated association; that there are 150 members of said un-

incorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 232 pupils attending said school of whom 25 are in the kindergarten, 50 are in the first [17] grade and 35 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That U. Uranaka, K. Tokumoto and R. Ito are members of the Wahiawa Gakuen, an unincorporated association; that there are 136 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are 385 pupils attending said school; that the said unincorporated association is the owner of property worth $3,000.00.

That G. Ginda, H. Yamashiro and K. Kawamura are members of the Waiahole Japanese Language School, an unincorporated association; that there are 15 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 15 pupils attending said school of whom 15 are in the first grade; that the said unincorporated association is the owner of property worth $50.00.

That H. Miura, U. Matsuo and M. Okamoto are members of the Waialua Japanese Language School,

an unincorporated association; that there are 70 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 188 pupils attending said school of whom 32 are in the kindergarten, 23 are in the first grade and 17 are in the second grade; that the said unincorporated association is the owner of property worth $100.00. [18]

That K. Ibaraki, T. Murakami and N. Aoki are members of the Waikiki Japanese Language School, an unincorporated association; that there are 100 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 112 pupils attending said school; that the said unincorporated association is the owner of property worth $1,000.00.

That M. Tasaka and I. Iwanaga are members of the Hawaii Japanese High School, an unincorporated association; that there are 599 pupils in the first and second grades of said unincorporated association.

That M. Tasaka and I. Iwanaga are members of the Fort Educational Home, an unincorporated association and that there are 470 pupils in the first and second grades of said unincorporated association.

That T. Ikeda, T. Watanabe and T. Toshiyuki are members of the Central Kona Japanese Language

School, an unincorporated association; that there are 86 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are 222 pupils attending said school of whom 35 are in the first grade and 34 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That C. Koya, K. Yokoyama and T. Okaji are members of the Hakalau Japanese Language School, an unincorporated association; that there are 56 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association [19] employs 3 teachers; that there are 165 pupils attending said school of whom 17 are in the first grade and 10 are in the second grade; that the said unincorporated association is the owner of property worth $850.00.

That T. Takaki, T. Goushi and F. Uyehana are members of the Halawa Japanese Language School, an unincorporated association; that there are 26 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 60 pupils attending said school of whom 5 are in the kindergarten, 11 are the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $600.00.

That G. Suzuki, J. Maeda and S. Okinishi are members of the Hiilea Japanese Language School, an unincorporated association; that there are 11 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 1 teacher; that there are 26 pupils attending said school of whom 2 are in the kindergarten, 4 are in the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $100.00.

That B. Takeda, Y. Hata and T. Ikeda are members of the Hilo Educational Home, an unincorporated association; that there are 168 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 6 teachers; that there are 327 pupils attending [20] said school of whom 26 are in the kindergarten, 3 are in the first grade and 13 are in the second grade; that the said unincorporated association is the owner of property worth $3,200.00.

That B. Takeda, Y. Hata and T. Ikeda are members of the Hilo Japanese High School, an unincorporated association; that there are 83 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 2 teachers; that there are 119 pupils attending said school; that the said unincor-

porated association is the owner of property worth $3,200.00.

That T. Hara, F. Kusumoto and I. Isono are members of the Hilo Practical School, an unincorporated association; that there are 48 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 3 teachers; that there are 137 pupils attending said school of whom 10 are in the kindergarten, 11 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That T. Yonemoto, K. Irie and K. Inokoji are members of the Honokaa Japanese Language School, an unincorporated association; that there are 52 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 2 teachers; that there are 220 pupils attending said school of whom 30 are in the first grade and 20 are in the second grade; that the said unincorporated association is the owner of property worth $5,000.00. [21]

That A. Nanbu, K. Kinoshita and K. Shikasho are members of the Honomakau Japanese Language School, an unincorporated association; that there are 21 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 1 teacher;

that there are 63 pupils attending said school of whom 9 are in the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $625.00.

That C. Miyakawa, M. Taniguchi and K. Takumaru are members of the Honomu Gakuen, an unincorporated association; that there are 33 members of said unincorporated association, which members are the owners of property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 53 pupils attending said school of whom 17 are in the kindergarten, 32 are in the first grade and 13 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That M. Nakao, Yamada and S. Sasaki are members of the Honuapo Japanese Language School, an unincorporated association; that there are 13 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 32 pupils attending said school of whom 5 are in the first grade and 4 are in the second grade; that the said unincorporated association is the owner of property worth $100.00.

That K. Sakamoto, T. Endo and T. Higashi are members of the Hookena Japanese Language School, an unincorporated association; that there are 12 members of said unincorporated association, [22] which members are the owners of the property belonging to said unincorporated association;

that said unincorporated association employs 1 teacher; that there are 25 pupils attending said school of whom 6 are in the first grade and 4 are in the second grade; that the said unincorporated association is the owner of property worth $50.00.

That K. Okamoto, N. Nakagawa and M. Taniguchi are members of the Kaapahu Japanese Language School, an unincorporated association; that there are 28 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 52 pupils attending said school of whom 5 are in the first grade and 7 are in the second grade; that the said unincorporated association is the owner of property worth $150.00.

That G. Higashi, K. Monma and K. Nitta are members of the Kapoho Japanese Language School, an unincorporated association; that there are 6 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 1 teacher; that there are 46 pupils attending said school of whom 5 are in the kindergarten, 15 are in the first grade and 13 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That T. Yoshida, Y. Hamasako and H. Iura are members of the Kapulena Japanese Language School, an unincorporated association; that there are 20 members of said unincorporated association,

which members are the owners of the property belonging to said unincorporated association; that said unincorporated association [23] employs 1 teacher; that there are 32 pupils attending said school of whom 4 are in the kindergarten, 4 are in the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $400.00.

That Y. Manoki, T. Tanouye and K. Fujita are members of the Kaumana Japanese Language School, an unincorporated association; that there are 32 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 97 pupils attending said school of whom 11 are in the first grade and 8 are in the second grade; that said unincorporated association is the owner of property worth $1,450.00.

That K. Ikeda and Y. Nagata are members of the Keauhou Educational Home, an unincorporated association; that there are 19 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 45 pupils attending said school of whom 5 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $250.00.

That S. Uesugi, C. Kamimura and R. Furusho are members of the Kohala Japanese Language

School, an unincorporated association; that there are 100 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 94 pupils attending said school of whom 5 are in the kindergarten, 16 are in the first grade and 10 are in the second grade; [24] that the said unincorporated association is the owner of property worth $300.00.

That B. Toguchi, Y. Endo and T. Sugahara are members of the Kukaiau Japanese Language School, an unincorporated association; that there are 24 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 94 pupils attending said schools of whom 5 are in the first grade and 7 are in the second grade; that the said unincorporated association is the owner of property worth $500.00.

That O. Hiraki, K. Naraki and S. Ito are members of the Kurtistown Japanese Language School, an unincorporated association; that there are 38 members of said uincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers, that there are 108 pupils attending said school of whom 7 are in the kindergarten, 10 are in the first grade and 19 are in the second grade; that the said unincorporated association is the owner of property worth $4,000.00.

That T. Yamamoto, A. Komatsu and S. Takaki are members of the Naalehu Japanese Language School, an unincorporated association; that there are 25 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 59 pupils attending said school of whom 15 are in the first grade and 3 are in the second grade; that the said unincorporated association is the owner of property worth $350.00 [25]

That Y. Takahata, C. Inouo and I. Ariyoshi are members of the Napoopoo Japanese Language School, an unincorporated association; that there are 48 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 97 pupils attending said school of whom 24 are in the first grade and 16 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That M. Shigaki, T. Matsuda and R. Meayama are members of the Ninole Japanese Language School, an unincorporated association; that there are 66 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 162 pupils attending said school of whom 22 are in the first grade and 17 are in the second

grade; that the said unincorporated association is the owner of property worth $1,580.00.

That S. Hirashima, M. Tamura and I. Hosaida are members of the Niulii Japanese Language School, an unincorporated association; that there are 26 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 2 teachers; that there are 81 pupils attending said school of whom 3 are in the first grade and 4 are in the second grade; that the said unincorporated association is the owner of property worth $2,960.00.

That T. Oto, Y. Akiyama and I. Kasai are members of the Olaa 9-Mile Gakuen, an unincorporated association; that there are 115 members of said unincorporated association, which [26] members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 297 pupils attending said school of whom 40 are in the kindergarten, 41 are in the first grade and 26 are in the second grade; that the said unincorporated association is the owner of property worth $2,500.00.

That K. Yamada, T. Yanagisawa and A. Nakamura are members of the Onomea Japanese Language School, an unincorporated association; that there are 30 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 55 pupils attending said

school of whom 21 are in the kindergarten and 2 are in the second grade; that the said unincorporated association is the owner of property worth $200.00.

That K. Yamamoto, D. Miyagawa and H. Ohara are members of the Ookala Japanese Language School, an unincorporated association; that there are 39 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 71 pupils attending said school of whom 7 are in the kindergarten, 8 are in the first grade and 12 are in the second grade; that the said unincorporated association is the owner of property worth $700.00.

That T. Koike, K. Maoda and U. Murakami are members of the Pahala Educational Home, an unincorporated association; that there are 48 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 91 pupils attending [27] said school of whom 6 are in the kindergarten, 8 are in the first grade and 15 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That T. Marumoto, D. Tominaga and S. Kitsuki are members of the Pahala Japanese Language School, an unincorporated association; that there are 32 members of said unincorporated association, which

members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 68 pupils attending said school of whom 7 are in the kindergarten, 8 are in the first grade and 12 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That J. Ozaki, A. Miyabara and M. Hayashikawa are members of the Pahoa Japanese Language School, an unincorporated association; that there are 68 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 195 pupils attending said school, of whom 20 are in the kindergarten, 15 are in the first grade and 6 are in the second grade; that the said unincorporated association is the owner of property worth $2,300.00.

That R. Tamamoto, R. Suzuki and H. Nagai are members of the Papaaloa Japanese Language School, an unincorporated association; that there are 51 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 118 pupils attending said school of whom 24 are in the kindergarten, 21 are in the first grade and 18 are in the second grade; that the said unincorporated [28] association is the owner of property worth $2,500.00.

That T. Morigaki, K. Sakamoto and J. Ishida are members of the Papaikou Educational Home, an unincorporated association, that there are 64 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 4 teachers; that there are 155 pupils attending said school of whom 10 are in the kindergarten, 33 are in the first grade and 19 are in the second grade; that the said unincorporated association is the owner of property worth $800.00.

That I. Kurokawa, M. Hayakawa and S. Kikuchi are members of the Papaikou Japanese Language School, an unincorporated association; that there are 77 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 240 pupils attending said school of whom 11 are in the kindergarten, 31 are in the first grade and 31 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That S. Ogawa, R. Morimoto and K. Otochi are members of the Piihonua Japanese Language School, an unincorporated association; that there are 21 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 67 pupils attending said school of

whom 8 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $1,570.00. [29]

That S. Yoshida, K. Hayashida and H. Miyamoto are members of the Wailea Japanese Language School, an unincorporated association; that there are 24 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 82 pupils attending said school of whom 8 are in the first grade and 6 are in the second grade; that the said unincorporated association is the owner of property worth $300.00.

That K. Orimoto, J. Ogata and D. Uamaguchi are members of the Wainaku Kyoritsu Japanese language School, an unincorporated association; that there are 55 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 126 pupils attending said school of whom 25 are in the first grade and 10 are in the second grade; that the said unincorporated association is the owner of property worth $2,000.00.

That R. Shimotsu, I. Fujikawa and Y. Murai are members of the Wainaku Jodo Mission School, an unincorporated association; that there are 72 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 2 teachers; that

there are 106 pupils attending said school of whom 22 are in the first grade and 24 are in the second grade; that the said unincorporated association is the owner of property worth $7,000.00.

That T. Miyasaki, T. Nishiyama and B. Higa are members of the Paauilo Japanese Language School, an unincorporated association; that the said unincorporated association employs 2 teachers and that there are 104 pupils attending said school. [30]

That M. Fujimitsu, T. Nomura and R. Kamebayashi are members of the Anahola Japanese Language School, an unincorporated association; that there are 11 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 44 pupils attending said school; that the said unincorporated association is the owner of property worth $200.00.

That S. Miura, I. Nakatsuka and K. Yokota are members of the Hanalei Japanese Language School, an unincorporated association; that there are 28 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that the said unincorporated association employs 1 teacher; that there are 35 pupils attending said school of whom 21 are in the first grade and 14 are in the second grade; that the said unincorporated association is the owner of property worth $800.00.

That K. Okimoto, J. Miura and J. S. Teraoka are members of the Kapaa Educational Home, an un-

incorporated association; that there are 68 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 129 pupils attending said school of whom 10 are in the first grade and 7 are in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That S. Ogata, T. Yoshimura and K. Urabe are members of the Kapaa Nissin Japanese School, an unincorporated association; that there are 30 members of said unincorporated [31] association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 56 pupils attending said school; that the said unincorporated association is the owner of property worth $1,000.00.

That N. Miyasaki, K. Ogata and I. Arrizumi are members of the Kealia Educational Home, an unincorporated association; that there are 26 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 53 pupils attending said school of whom 1 is in the second grade; that the said unincorporated association is the owner of property worth $3,000.00.

That T. Shimatsu, S. Tokioka and S. Yamashita are members of the Kekaha Japanese Language School, an unincorporated association; that there

are 142 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 142 pupils attending said school of whom 21 are in the kindergarten, 20 are in the first grade and 15 are in the second grade; that the said unincorporated association is the owner of property worth $1,500.00.

That T. Yoshimoto, E. Saiki and M. Saiki are members of the Kilauea Japanese Language School, an unincorporated association; that there are 28 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 67 pupils attending said school of whom 19 are in the first grade and 6 are in the second [32] grade; that the said unincorporated association is the owner of property worth $2,500.00.

That S. Muranaka, S. Ebata and S. Matsumoto are members of the Koloa Japanese Language School, an unincorporated association; that there are 30 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 162 pupils attending said school of whom 15 are in the first grade and 20 are in the second grade; that the said unincorporated association is the owner of property worth $500.00.

That K. Okinaga, T. Yoshi and K. Horibe are

members of the Koolau Japanese Language School, an unincorporated association; that there are 24 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 42 pupils attending said school of whom 7 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $150.00.

That J. Mashita, K. Matsumura and M. Kunioka are members of the Lawai Japanese Language School, an unincorporated association; that there are 43 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 76 pupils attending said school of whom 14 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $500.00 [33]

That T. Ueda, M. Kawata and N. Okazawa are members of the Makaweli Japanese Language School, an unincorporated association; that there are 90 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 130 pupils attending said school of whom 25 are in the second grade; that the said unincorporated association is the owner of property worth $400.00.

That J. Matsui, S. Higoshi and N. Kawamura are members of the Makaweli Camp 2 Japanese Language School; an unincorporated association; that there are 20 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 45 pupils attending said school of whom 16 are in the first grade and 1 is in the second grade; that the said unincorporated association is the owner of property worth $150.00;

That K. Muranaka, G. Tokunaga and S. Oshiro are members of the Mana Japanese Language School, an unincorporated association; that there are 19 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 30 pupils attending said school of whom 26 are in the first grade; that the said unincorporated association is the owner of property worth $325.00.

That M. Tanaka, C. D. Akinori and S. Yoshimasu are members of the Haiku Japanese Language School, an unincorporated association; that there are 150 members of said unincorporated association, which members are the owners of the property belonging to [34] said unincorporated association; that said unincorporated association employs 4 teachers; that there are 260 pupils attending said school of whom 45 are in the first grade and 30 are

in the second grade; that the said unincorporated association is the owner of property worth $1,000.00.

That M. Horiuchi, Y. Patsuma and M. Toma are members of the Honokowai Japanese Language School, an unincorporated association; that there are 7 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 29 pupils attending said school of whom 10 are in the second grade; that the said unincorporated association is the owner of property worth $15.00.

That T. Kurakake, K. Miho and H. Kinoshita are members of the Kahului Japanese Language School, an unincorporated association; that there are 81 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 178 pupils attending said school of whom 47 are in the first grade and 7 are in the second grade; that the said unincorporated association is the owner of property worth $2,500.00.

That U. Higa, T. Hanzawa and J. Izawa are members of the Kaupakalua Japanese Language School, an unincorporated association; that there are 31 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 2 teachers; that there are 84 pupils attending said school of whom 5 are in the first grade and 9 are in the second grade;

that the said unincorporated association is the owner of property worth $500.00 [35]

That I. Fujibayashi, K. Nagata and K. Okamoto are members of the Kula Japanese Language School an unincorporated association; that there are 37 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association that said unincorporated association employs 1 teacher; that there are 75 pupils attending said school of whom 12 are in the first grade and 8 are in the second grade; that the said unincorporated association is the owner of property worth $500.00.

That J. Murata, J. Sato and G. Masuda are members of the Lahiana Dowa Educational Home, an unincorporated association; that there are 122 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 3 teachers; that there are 267 pupils attending said school of whom 75 are in the first grade and 16 are in the second grade; that the said unincorporated association is the owner of property worth $2,500.00.

That I. Toyama, K. S. Matsui and K. Umemoto are members of the Mokawao Japanese Language School, an unincorporated association; that there are 41 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 89 pupils attending said school of

whom 7 are in the kindergarten, 30 are in the first grade and 17 are in the second grade; that the said unincorporated association is the owner of property worth $500.00.

That S. Kawashima, M. Takahashi and S. Kurisu are members of the Olowalu Japanese Language School, an unincorporated association; [36] that there are 12 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 28 pupils attending said school of whom 7 are in the first grade; that the said unincorporated association is the owner of property worth $125.00.

That S. Chikamori, S. Watanabe and Y. Fukuroku are members of the Peahi Japanese Language School, an unincorporated association; that there are 45 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 130 pupils attending said school of whom 5 are in the second grade; that the said unincorporated association is the owner of property worth $1,300.00.

That K. Watanabe, K. Takahama and S. Yamasaki are members of the Wahikuli Japanese Language School, an unincorporated association; that there are 7 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1

teacher; that there are 19 pupils attending said school of whom 4 are in the first grade and 2 are in the second grade; that the said unincorporated association is the owner of property worth $17.00.

That M. Uno, H. Kaneshina and T. Hirai are members of the Waihee Japanese Language School, an unincorporated association; that there are 21 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 53 pupils attending said school of whom 9 are in the first grade and 8 are in the [37] second grade; that the said unincorporated association is the owner of property worth $350.00.

That R. Sato, S. Furukawa and T. Sonoda are members of the Waikapu Japanese Language School, an unincorporated association; that there are 38 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that said unincorporated association employs 1 teacher; that there are 84 pupils attending said school of whom 9 are in the first grade and 15 are in the second grade; that the said unincorporated association is worth $1,000.00.

That G. Kawahara, K. Yamamoto and Y. Yoshida are members of the Wailuku Educational Home, an unincorporated association; that there are 108 members of said unincorporated association, which members are the owners of the property belonging to said unincorporated association; that

said unincorporated association employs 3 teachers; that there are 327 pupils attending said school of whom 51 are in the first grade and 20 are in the second grade; that the said unincorporated association is the owner of property worth $3,500.00.

VII.

That during a special session of the Legislature of the Territory of Hawaii held in the year 1920, there was passed an act designated "Act 30" duly approved on the 24th day of November, 1920, entitled "An act relating to the foreign language schools and the teachers thereof"; that during the session of the Legislature of the Territory of Hawaii held in the year 1923, there was passed an act designated "Act 171" duly approved on the 2d day of May, 1923, entitled "An act to amend sections 1, 2, 4, 7 and 8 of Act 30 of the Special Sessions Laws of 1920, and [38] adding thereto a new section to be known as Section 9a relating to Foreign Language Schools"; that the said Acts of 1920 and 1923 are embodied in the Revised Laws of Hawaii of 1925 as Chapter 32, including Sections 390 to 399 of said Revised Laws,

That during a Session of the Legislature of the Territory of Hawaii held in the year 1925, there was passed an act designated "Act 152" entitled "An act to amend Sections 391 and 398 of the Revised Laws of Hawaii, 1925, relating to Foreign Language Schools."

That a copy of the Act of 1920 as amended by the Act of 1923 and as further amended by the Act of 1925, as aforesaid, is hereto attached, marked

Exhibit "A" and which plaintiffs pray may be made part of this, their bill.

VIII.

That on the 1st y of June, 1925, the Department of Public Instruction adopted a certain resolution relating to the foreign language schools of the Territory, which resolutions were duly approved by the Governor of the Territory of Hawaii on the said last-mentioned date; that a copy of the said resolutions are hereto attached, marked Exhibit "B" and which plaintiffs pray may be made part of this, their bill.

IX.

And plaintiffs further show unto your Honors that there are in the Territory of Hawaii very many private schools supported and maintained by private individuals, associations and corporations furnishing instruction to children of school age in the Territory of Hawaii, and in which schools foreign languages are taught; that the Department of Public Instruction [39] does not prescribe, by regulations, the subjects and courses of study, the entrance and attendance prerequisite or qualifications of education, age, school attainments, demonstrated mental capacity, health and otherwise of the children attending said schools, nor does it prescribe the text-books to be used in said private schools, nor any of said private schools taxed, nor is any fee required of said private schools, for the privilege of conducting the same, nor is a pledge required of those conducting said private schools or teaching therein, as provided for those conducting

and teaching in foreign language schools under the provisions of Section 394 of the Revised Laws of Hawaii of 1925.

X.

That plaintiffs with other members of said unincorporated associations, conduct schools for the education of children in the Japanese language and employ teachers for that purpose, as aforesaid, and that plaintiffs and other members of said unincorporated association, who exercise and perform administration powers in reference to said schools and many of the teachers engaged therein are unable to read, write and speak the English language, and are unable to secure the permit referred to in Section 392 and 393 of the Revised Laws of 1925.

XI.

That there are in all 163 Foreign Language Schools in the Territory of Hawaii affected by the said Foreign Language School Acts; that of said schools nine are conducted in the Korean Language and seven in the Chinese language and that the remainder of said schools are conducted in the Japanese language and that all of said Foreign Language Schools are conducted and attended solely by persons of the Korean, Chinese and Japanese races. [40]

XI-a.

That in the conduct of the said schools by plaintiffs the hours of attendance thereat are so arranged as not to interfere with the attendance by the pupils therein of school age at the Government schools of the said Territory but on the contrary

the pupils attending said schools conducted by plaintiffs are urged and required to attend the said Government schools in their respective communities and said pupils do attend said Government schools throughout the said terms thereof.

That in said Government schools the Japanese language is not taught to the pupils thereof nor are the teachers teaching in said schools qualified to teach said language.

XI-b.

That plaintiffs as members of said schools, as aforesaid, are required to perform administrative duties with respect to the same; that is to say, they are required to procure suitable buildings and sanitary surroundings, to hire teachers and janitors and other servants, to collect moneys for the support and maintenance of said schools, to collect fees from the parents of children attending said schools, and, generally, to attend to the business matters connected with said schools.

That in performing the administrative duties, as aforesaid, plaintiffs almost exclusively deal with persons who speak the Japanese language and are unable to speak, read and write the English language. [41]

XII.

That many of the schools conducted by plaintiffs, as aforesaid, have connected therewith kindergarten departments; that the children attending said kindergarten departments are under the age at which attendance at the Government schools is made compulsory or permitted by law, and said children at-

tending said kindergarten departments do not attend the Government schools nor do they attend other private schools having a curriculum similar to that of the Government schools.

XIII.

That said Acts and said Rules and Regulations, above mentioned, are violative of the rights of the plaintiffs under the Constitution of the United States in that they deny to them the equal protection of the laws and deprive them of liberty and property without due process of law, which is guaranteed by Section 1 of the Fourteenth Amendment of said Constitution to all persons submitting themselves to the jurisdiction of the United States whether citizens or aliens.

XIV.

That said Acts and said Rules and Regulations, above mentioned, are violative of the rights of plaintiffs under the Constitution of the United States in that they deprive them of liberty and property without due process of law as guaranteed by the Fifth Amendment of said Constitution.

XV.

That said Acts and said Rules and Regulations, above mentioned, are in conflict with, repugnant to and violate Section 1977 of the Revised Statutes of the United States. [42]

XVI.

That said Acts and said Rules and Regulations, above mentioned, are in violation of and contrary to the existing treaty between the United States of America and the Empire of Japan providing that

"The citizens or subjects of each of the high contracting parties shall receive in the territories of the other the most constant protection and security for their persons and property and shall enjoy in this respect the same rights and privileges as are or may be granted to native citizens or subjects on their submitting themselves to the conditions imposed upon the native citizens or subjects."

XVII.

That said Acts and said Rules and Regulations, above mentioned, are in violation of and contrary to the existing Treaty between the United States of America and the Empire of Japan providing that "They (referring to American citizens or Japanese subjects) shall not be compelled under any pretext whatever to pay any charges or taxes other or higher than those that are or may be paid by native citizens or subjects."

XVIII.

That said Acts and said Regulations are invalid for the further reason that they are unreasonable, arbitrary, oppressive, capricious, inequitable, confiscatory, discriminatory and unjust and made to depend on a difference of race.

XIX.

That said Acts above mentioned are invalid for the reason that under the provisions thereof power and authority is delegated to the Department of Public Instruction to determine and prescribe what Acts shall or shall not constitute a crime under the laws of the Territory of Hawaii punishable by fine and imprisonment [43] and to determine what

acts shall or shall not constitute a violation of the said Act 30 and the amendments thereof.

XX.

That plaintiffs are advised, and therefore aver, that the defendants above named are by law expressly charged with the duty of enforcing the terms and provisions of said Act 30 of the laws of 1920, as amended by said Act 171 of the laws of 1923 and as further amended by said Act 152 of the laws of 1925, and are vested with power and charged with the duty of prosecuting criminally for the offenses denounced therein as provided by said Acts.

XXI.

That plaintiffs verily believe and allege that unless the enforcement of said invalid and unconstitutional statute is restrained, the defendants will prevent plaintiffs from conducting the said schools belonging to and conducted by these plaintiffs and thereby deprive said plaintiffs of their right to engage freely in a legal, proper and wholesome vocation, business and enterprise as authorized by law, and will deprive the parents of the children attending the schools of plaintiffs of the right to have their children taught the language of their ancestors.

XXII.

That if said plaintiffs should be compelled to comply with the terms and provisions of said Act 30 of the Session Laws of 1920, as amended, and the same should be enforced against them, their valuable property would be depreciated, their staff of skilled and experienced teachers would be disorganized, all to their great and irreparable injury, and to the

great and irreparable injury of said plaintiffs, the teachers employed in [44] teaching said schools, and the parents of children attending said schools, and said damage and injury would be incapable of being admeasured and adjudicated in an action at law; and plaintiffs further allege that if plaintiffs are prevented from the free use, in connection with the conduct of their schools, of the aforesaid property, or if the officers, employees or teachers of plaintiffs are arrested or prosecuted, or otherwise harassed by legal proceedings for alleged violation of the provisions of said Act 30 of the Laws of 1920, as amended, such interference, arrests, prosecutions, or other proceedings would immediately involve them in a multiplicity of suits and legal proceedings and would, long before any judgment or decision could be had in such suits and proceedings, compel them to cease the conduct of said schools to their great damage and irreparable injury.

XXIII.

That plaintiffs further allege that unless restrained by this Honorable Court, the said defendants intend to and will enforce against plaintiffs, their officers, agents, servants, employees and teachers, the various pains, penalties, and forfeitures provided for in said Act 30 of the Session Laws of 1920, as amended, and intend to and will commence and prosecute the various prosecutions, proceedings and suits purported to be authorized or required; and that such action on the part of the defendants will necessarily and inevitably involve the plaintiffs, their officers, agents, servants, em-

ployees and teachers in a multiplicity of legal proceedings, and involve and threaten plaintiffs with the arrest and dispersion of their officers and their staff of skilled, experienced and trained teachers, or force them to quit the employ of said [45] plaintiffs in order to avoid prosecution, possible punishment and other harassment under cover of legal proceedings, and threaten and involve the destruction of the business of conducting said schools, or to the irreparable damage of said plaintiffs and that all and singular the damages resulting from said acts and proceedings would be incapable of admeasurement and adjudication at law.

XXIV.

That plaintiffs are without adequate remedy at law in the premises and only in a suit of this nature and by the injunctive process of this Court can they be fully protected in the enjoyment of their property and rights as aforesaid; the granting of the injunctive process as hereafter prayed would prevent a multiplicity of suits and prosecutions, and the questions herein involved can be adequately determined only in a suit of this nature.

IN CONSIDERATION WHEREOF, PLAINTIFFS PRAY:

1. That a subpoena issue out of this Honorable Court citing the said defendants and each of them to appear and answer this, their bill of complaint, answer under oath being hereby expressly waived.

2. That said defendants and each of them, their deputies, assistants and subordinates, and each and every one of them be enjoined and restrained from

in any manner enforcing or attempting to enforce or causing to be enforced against plaintiffs, their officers, agents, servants, employees and teachers, or any of them, any of the pains, penalties and forfeitures provided in and by said statute (Exhibit "A") as amended and from arresting or prosecuting or causing to be arrested and/or prosecuted the plaintiffs, their officers, [46] agents, servants, employees and teachers, or any of them, for or on account of any alleged violation by them of the terms and provisions of said statutes, and from in any manner and to any extent, interfering with the property, business and affairs of plaintiffs for any alleged violation of said statutes and/or said Rules and Regulations.

Plaintiffs further pray that they be granted a temporary injunction pending the final hearing and disposition of this cause whereby the said defendants, their deputies, assistants and each and every one of them be enjoined and restrained as heretofore prayed.

Plaintiffs further pray that they be granted a temporary restraining order pending the final hearing and disposition of this cause, whereby the said defendants, their deputies, assistants and subordinates, and each and every one of them, be enjoined and restrained as hereinbefore prayed.

And plaintiffs further pray that they have such other and further relief as to the Court may seem just and equitable in the premises.

Dated at Honolulu, this 13th day of June, A. D. 1925.

LIGHTFOOT & LIGHTFOOT.
By (S.) J. LIGHTFOOT,
(S.) J. B. POINDEXTER,
Attorneys for Plaintiffs. [47]

United States of America,
Territory of Hawaii,—ss.

Now comes T. Iwanaga, and being first duly sworn, on oath deposes and says: That he is named as one of the plaintiffs in the foregoing bill of complaint; that he has read the foregoing bill and knows the contents thereof; that he knows that the said bill is true except as to the matters and things therein stated upon information and belief and as to all such matters and things he verily believes it to be true.

(S.) T. IWANAGA.

Subscribed and sworn to before me this 13th day of June, 1925.

[Seal] (S.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1925. [48]

EXHIBIT "A."

Laws Relating to Foreign Language Schools, Being Act 30 of the Session Laws of 1920, as Amended by Act 171 of the Session Laws of 1923 and by Act 152 of the Session Laws of 1925.

Sec. 390. DEFINITION OF TERMS "FOREIGN LANGUAGE SCHOOL" AND "DEPART-

MENT." The term "foreign language school," as used in this chapter shall be construed to mean any school which is conducted in any language other than the English language or Hawaiian language, except Sabbath schools. All subdivisions and activities under the direction, management or supervision of any foreign language school,—whatever language may be used in such subdivisions and/or activities,—shall be subject to the provisions of this chapter. The word "department" shall mean the department of public instruction of the Territory of Hawaii. (Session Laws of 1920, Act 30, Section 1; amended by Session Laws of 1923, Act 171, Section 1.)

Sec. 391. PERMITS, FEES. No foreign language school shall be conducted in the Territory unless under a written permit therefor from the department of public instruction nor unless the fee therefor shall have been paid as hereinafter provided. Nor shall such permit be issued unless such fee shall have been paid. Such permit shall be kept exposed in a prominent place at such school so as to be readily seen and read by visitors thereat.

For the purposes of this chapter the school year shall be deemed to begin on September 1 of each year and to end on August 31 of the following year. After May 10, 1925, on or before the first day on which any foreign language school shall be conducted in any school year or unexpired part thereof, there shall be paid to the department for or in respect of conducting such school during such school year or unexpired part thereof a fee, the amount of

which shall be computed as nearly as may be, at the rate of one dollar ($1.00) per pupil, on the estimated average attendance of pupils at such school during the period during which such school was conducted in the next preceding school year or, if such school shall not have been conducted during any part of such preceding school year, then at the same rate on the estimated expected average attendance during the school year or unexpired part thereof in question, in which latter case the amount shall be adjusted to conform to the estimated average attendance during such year or part thereof by an addition to or subtraction from the fee payable for the next following school year. The amount of such fee shall be estimated and determined by the department from such information as it may have and shall be payable by any person, persons or corporation conducting or participating in conducting such school. All officers, all teachers, and all members of any committee or governing board, of any such school and, in case such school is conducted by or for a corporation or a voluntary association or other group of persons, all members of associates or such corporation, association or group, shall be deemed to be participants in conducting such school. [49] Payment heretofore made for any school for the school year beginning September 1, 1924, or any part thereof of the fee which was provided for in this section before the passage of this amendment shall be deemed to be in full satisfaction of the fee required hereunder for such school for such school year or the unexpired part thereof.

In case any such school shall be conducted at any time without such fee having been paid for conducting the same, the Territory may recover such fee in a civil action against any person, persons or corporation who or which so conducted or participated in so conducting such school, and for that purpose if such school is conducted, or if its conducting is participated in, by a corporation or a voluntary association or other group of persons, such action may be brought against such corporation or association or group in its corporation or association or common name, with or without joining any or all individual defendants who may be liable for such fee, and, in a case of such association or group, process may be served on any officer or teacher, or any member of a committee or governing board, or on any member or associate, of such school, association or group, and any judgment recovered against the corporation or association or group as such may be enforced against the property of the corporation or the joint property of the members or associates of such association or group, as the case may be, and against the individual property of any of the officers, teachers, members of any committee or governing board, or members or associates of such school, corporation, association or group, who shall have been served with process or who shall have appeared in the action, in the same manner and to the same extent as if all had been named as defendants. The civil and penal remedies under this chapter shall be concurrent and not exclu-

sive of each other. No injunction shall issue from, nor shall any suit be maintained in, any court for the purpose of restraining the determination or collection of any such fee or the prosecution of any penal proceeding for conducting or participating in conducting any such school without such fee having been paid; but any payor of any such fee who desires to contest the validity thereof may do so under the provisions of Section 1444, for which purpose the department shall be deemed a public accountant within the meaning of that section and Section 1436.

On September 1, 1923, and annually thereafter, all permits, in order to be valid, must be renewed and shall, unless previously forfeited, be renewed by the department on the payment of a fee determined in the same manner as above specified; PROVIDED, that the department shall not be required to renew a permit for the conducting of any foreign language school in the conducting of which there has been a violation of the terms or provisions of this chapter. All of said fees collected by the said department shall be paid over to the treasurer of the Territory of Hawaii, and the moneys so paid are hereby appropriated to the department of public instruction to be expended in enforcing and carrying out the provisions of this chapter. If at any time the funds at the disposal of the department from fees previously collected, or from royalties, commissions or other moneys received in connection with the publication or sale of foreign language school

text books, shall make it [50] possible fully and effectively to carry out the provisions of this chapter with the permit fees payable by the schools based on a lower rate than one dollar ($1.00) per pupil, the department is authorized to make such a reduction in that rate as it may deem reasonable and expedient.

Every person conducting a foreign language school shall, not later than June 15 of each year, file with the department on forms prescribed or furnished by it, a sworn list of all pupils in attendance at said school during the current school year, showing the name, sex, parents, or guardians, place of birth and residence of each child. (Session Laws of 1920, Act 30, Section 2; amended by Session Laws of 1923, Act 171, Section 2 and Session Laws of 1925, Act 152, Section 1.)

Sec. 392. PERMIT TO TEACH. No person shall teach in a foreign language school unless and until he shall have first applied to and obtained a permit so to do from the department, and this shall also be construed to include persons exercising or performing administrative powers at any school. (Session Laws of 1920, Act 30, Section 3.)

Sec. 393. QUALIFICATIONS OF TEACHERS. No permit to teach in a foreign language school shall be granted unless and until the department is satisfied that the applicant for the same is possessed of the ideals of democracy; knowledge of American history and institutions, and

knows how to read, write and speak the English language.

It is hereby declared that the object of this chapter is to fully and effectively regulate the conducting of foreign language schools and the teaching of foreign languages, that the Americanism of the pupils may be promoted; and the department is hereby directed to carry the provisions of this chapter into effect in accordance with the spirit of this declaration. (Session Laws of 1920, Act 30, Section 4; amended by Session Laws of 1923, Act 171, Section 3.)

Sec. 394. PLEDGES. Before issuing a permit to conduct foreign language school or to teach in such school the department shall require the applicant for such permit to sign a pledge that the applicant will, if granted a permit to conduct or teach in such a school, abide by and observe the terms of this law and the regulations and orders of the department and will, to the best of his ability, so direct the minds and studies of pupils in said school as will tend to make them good and loyal American citizens and will not instruct or permit said pupils to receive instruction in said school in any way inconsistent therewith. (Session Laws of 1920, Act 30, Section 5.)

Sec. 395. SESSIONS OF SCHOOLS; HOURS OF ATTENDANCE. No foreign language school shall be conducted in the morning before the school hours of the public school or during the hours while the public schools are in session. Nor shall any pupil attend a foreign language school for

more than one hour each day nor exceeding six hours in any one week, nor exceeding thirty-eight weeks in any school year. [51]

PROVIDED, however, that the department may, in its discretion, with the approval of the governor, modify the terms of this section if it deems it can do so consistently with the declared object of this chapter. (Session Laws of 1920, Act 30, Section 6.)

Sec. 396. REGULATIONS. The department shall have full power from time to time to prescribe, by regulations, the subjects and courses of study of all foreign language schools, and the entrance and attendance *pe*requisites or qualifications of education, age, school attainment, demonstrated mental capacity, health and otherwise, and the text books to be used in any foreign language school.

Until otherwise provided by the department, the following regulations shall be in effect:

From the present up to September 1, 1923, every pupil shall have first satisfactorily completed the American public school first grade, or a course equivalent thereto, before attending, or being allowed to further attend, any foreign language school.

Beginning September 1, 1923, and thereafter, every pupil shall have first satisfactorily completed the American public school first and second grades, or courses equivalent thereto, before attending or being allowed to further attend, any foreign language school.

Beginning September 1, 1923, and thereafter, for grades one, two and three; and beginning September 1, 1924, and thereafter, for grades four and above; all new text books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable, English equivalents for foreign words and idioms.

The department is hereby authorized to prepare or cause to be prepared or procure or arrange for procuring suitable text books for the teaching of foreign languages in the foreign language schools and to enter into an agreement or agreements for the publishing and sale of the same. All royalties, commissions and money received by or on behalf of the department in connection with the publication or sale of such text-books shall be paid over to the treasurer of the Territory and are hereby appropriated to the department to be expended for the purposes of this chapter. In every foreign language school no subject of study shall be taught, nor course of study followed, nor entrance nor attendance qualification required, nor text-books used, other than as prescribed or permitted by the department; PROVIDED, however, that the regulations set forth in this section shall be effective until superseded in part, or in whole, by others made by the department. (Session Laws of 1920, Act 30, Section 7; amended by Session Laws of 1923, Act 171, Section 4.) [52]

Sec. 397. INSPECTORS AND AGENTS. The department shall have power to appoint one or more inspectors of foreign language schools and to pay the salaries and necessary expenses thereof; such inspectors and other duly authorized agents of the department shall have the right freely to visit said foreign language schools and to inspect the buildings, equipment, records and teaching thereof and the text-books used therein.

If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess the qualifications herein required, or shall have violated or failed to observe any of the provisions of this chapter, or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore granted and the same shall thereupon be and become null and void. (Session Laws of 1920, Act 30, Section 8; amended by Session Laws of 1923, Act 171, Section 5.)

Sec. 398. PENALTIES. Any person who shall conduct or participate in conducting a foreign language school, or who shall teach in a foreign language school, contrary to the provisions of this chapter, or who shall violate or participate in violating any of the provisions thereof or of the regulations or orders of the department, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed twenty-five dollars ($25.00). Each day's violation of this chapter or of any of the

provisions thereof shall be deemed a separate offense. (Session Laws of 1920, Act 30, Section 9; amended by Session Laws 1925, Act 152, Section 2.)

Sec. 399. INVALIDITY OF PART OF CHAPTER; EFFECT. If any section or part of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid. (Session Laws of 1923, Act 171, Section 6.) [53]

EXHIBIT "B."

BY AUTHORITY.

On and after September 1, 1925, and until further notice, the following regulations shall be in effect:

I. ATTENDANCE.

Those Foreign Language Schools, whose textbooks and course of study are approved by the Department of Public Instruction, may admit to any grade any pupil who is in regular attendance at any Public School of the Territory of Hawaii or any approved private school.

Nothing in the foregoing shall be taken to forbid the attendance of pupils who have completed the eighth grade of the Territorial public schools or its equivalents, or who are over fourteen years of age.

II. COURSE OF STUDY AND TEXT-BOOKS.

1. FOR JAPANESE SCHOOLS—The Depart-

ment approves a primary course of two years and an elementary course of six years.

Those schools which desire to do so may also conduct a high school course of two or more years for pupils who have satisfactorily completed the elementary course.

For the above schools, the Department approves the following text-books:

(a) For the first primary grade, a well illustrated primer in kata kana to be prepared before said date under the supervision of the Department, based as far as possible on the vocabulary taught in the first grade of the American Public School and containing as far as practicable English and Japanese versions of each lesson. This book is designed especially to enable pupils to use correctly the simpler forms of the language. [54]

(b) For the second primary grade, a primer to be prepared before said date under the supervision of the Department using the hiragana, and so far as practicable giving English equivalents of new words and idioms. In addition to reading and conversation, especial attention is to be paid in the second grade to practice in writing the kana.

(c) For the elementary course, grades I to VI, the use of the corresponding books of the Hawaii Language School readers is approved.

It is recommended that an increasing amount of time be devoted to Japanese Composition, and to writing the characters from dictation, the object being to ensure a ready recognition of the char-

acters, not only in the familiar content of the readers, but wherever seen.

(d) For the high school course, no text-books are prescribed for the present but an increased amount of composition work is suggested. Letter-writing and translation of easy English into Japanese should begin with the first year of the high school course. Turkington's "My Country" is suggested as suitable material for this purpose.

By the end of the second year of the high school course, a reading knowledge of not less than two thousand Chinese characters should be attained.

Adopted June 1, 1925, by the Commissioners of Public Instruction.

(Signed) W. E. GIVENS,
Superintendent of Public Instruction, Territory of Hawaii.

Approved:

[Seal] (Signed) W. R. FARRINGTON,
Governor of Hawaii. [55]

The President of the United States of America,
To Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, GREETING:

SUBPOENA.

YOU ARE HEREBY COMMANDED to be and appear before the undersigned Judge of the Dis-

trict Court of the United States of America for the District of Hawaii, at his courtroom in Honolulu, within twenty days after the service hereof upon you, to answer a bill of complaint exhibited against you in such court by T. Tokushige et al., and to do and receive what the said Court shall have considered in this behalf; and this you are not to omit under penalty of Five Thousand Dollars.

WITNESS, the Honorable J. T. DeBOLT, this 13th day of June, 1925.

[Seal] (Sgd.) WM. L. ROSA,
Clerk.

By ————————,
Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12, RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES.

YOU ARE HEREBY REQUIRED to enter your appearance in the above suit on or before twenty days after service hereof, excluding this day, at the clerk's office in said court, pursuant to said bill, otherwise the said bill will be taken *pro confesso.*

(Sgd.) WM. L. ROSA,
Clerk. [56]

United States Marshal's Office.

MARSHAL'S RETURN.

The within plaintiffs' bill of complaint, temporary restraining order, and subpoena was received by me on the 13th day of June, A. D. 1925, and is returned executed this 15th day of June, A. D. 1925

upon Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, by exhibiting to each of them the original plaintiffs' bill of complaint, temporary restraining order, and subpoena, and by handing to and leaving with each of them a certified copy of plaintiffs' bill of complaint, temporary restraining order, and subpoena.

(Sgd.) OSCAR P. COX,
United States Marshal.

Dated at Honolulu, T. H., this 15th day of June, A. D. 1925. [57]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Temporary Restraining Order. Attest: A true copy [Seal] (Sgd.) Wm. L. Rosa, Clerk, United States District Court, Territory and District of Hawaii. By ————, Deputy. Lightfoot & Lightfoot and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, T. H., Attorneys for Plaintiffs. [58]

TEMPORARY RESTRAINING ORDER.

To Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, GREETING:

The said plaintiffs having filed their bill of complaint in the above-entitled suit praying for a temporary restraining order against you and each of you requiring you and each of you to refrain from certain acts hereinafter more particularly set forth, and the Honorable J. T. DeBolt, Judge of said Court, after consideration of said bill of complaint, having granted said prayer in and by his order of this day,

NOW, THEREFORE, you, the said defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, your deputies, assistants and subordinates, and each and every one of them are hereby strictly commanded until the further order of this Court from in any manner enforcing or attempting to enforce or causing to be enforced against the plaintiffs, their officers, agents, servants, employees and teachers or any of them, any of the pains, penalties and forfeitures provided in and by that certain statute enacted by the Legislature of

the Territory of Hawaii at the Special Session thereof in the year 1920 and designated as Act 30 (S. B. 32) and [63] duly approved on the 24th day of November, 1920, and which is entitled "An Act Relating to the Foreign Language Schools and Teachers Thereof," as amended by the Acts of 1923 and 1925.

And you, the said defendants, and each of you, your deputies, assistants, and subordinates and each and every one of you, until the further order of this Court be and you are hereby enjoined and restrained from arresting or prosecuting or causing to be arrested and/or prosecuted, the plaintiffs, their officers, agents, servants, employees and teachers or any of them, for or on account of any alleged violation by them or any of them of the terms and provisions of said statutes, and from in any manner and to any extent interfering with the property, business and affairs of plaintiffs for any alleged violation of said statutes.

WITNESS the Honorable J. T. DeBolt, Judge of the United States District Court in and for the District and Territory of Hawaii, this 13th day of June, A. D. 1925.

[Seal] (Sgd.) J. T. DeBOLT,
Judge, United States District Court in and for the District and Territory of Hawaii. [64]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278.

T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Motion to Dissolve or Modify Restraining Order. Filed June 17, 1925, at 2 o'clock and 35 minutes P. M. Wm. L. Rosa, Clerk. By (S.) Wm. F. Thompson, Deputy Clerk. William B. Lymer, Attorney General, The Capitol, Frear, Prosser, Anderson & Marx, 507 Stangenwald Building, Attorneys for Respondents. [65]

MOTION TO DISSOLVE OR MODIFY RESTRAINING ORDER.

Come now the respondents in the above-entitled cause and jointly and severally move this Honorable Court to dissolve or modify, as hereinafter more particularly set forth, the temporary restraining order issued in said cause on the 13th, and served on said respondents on the 15th day of June, 1925, upon the following grounds:

I.

That the issuance of said restraining order in the manner and form and under the conditions or lack of conditions upon which the same was issued was and is not authorized by any law of the United States but was and is contrary to the provisions of the laws of the United States.

II.

That the issuance of said restraining order is not authorized by Section 266 of the Judicial Code of the United States (36 Stat. L. 1162, as amended by 37 Stat. L. 1013), for the reasons, among others, that the statutes of the Territory of Hawaii in question mentioned in the petition herein, are not

[66] statutes of a state within the meaning of said Section 266 and that no irreparable loss or damage is shown by the petitioners herein in their said petition or by affidavit or otherwise such as would justify the issuance of said restraining order.

III.

That contrary to the provisions of Section 17 of the Act of the Congress of the United States of October 15, 1914, Chapter 323 (38 Stat. L. 737), said restraining order was granted without notice to the respondents herein or any of them and without its appearing clearly or at all from specific facts shown by affidavit or by the verified petition that immediate or irreparable injury, loss or damage would result to the petitioners herein before notice could be served and a hearing had thereon, and that said restraining order does not define the injury or state why it is irreparable or why the order was granted without notice, nor does it provide by its terms that it shall expire within such time after entry, not to exceed ten days, as the court or judge might fix, unless within the time so fixed the order should be extended for a like period for good cause shown and the reasons for such extension should be entered of record.

IV.

That said restraining order was issued without the giving of security by the applicants therefor, —contrary to the provisions of Section 18 of said last above mentioned Act.

V.

That said restraining order was issued without

compliance with the provisions of Section 19 of said last above mentioned Act, in that it does not set forth the reasons for the issuance of the same, is not specific in terms and does not describe in reasonable detail and not by reference to the bill of complaint or other document, the act or acts sought to be restrained. [67]

VI.

That said restraining order was issued without such showing in said petition or by affidavit or otherwise of immediate and irreparable injury, loss or damage as would justify the issuance thereof under any of the statutes of the United States above mentioned or otherwise.

VII.

That the petitioners are guilty of such laches in the institution of this suit and in applying for an injunction against the enforcement of said statutes of the Territory of Hawaii as to preclude them from being entitled to the issuance of such restraining order, even if they would otherwise be entitled to the same.

VIII.

That said petition is insufficient in law by reason of its failure to show that the petitioners or any of them are entitled to bring or maintain the same in such manner and form as the same has been brought.

IX.

That no sufficient grounds are shown in or by said petition or otherwise to justify this court as a court of equity in the issuance of such restraining order.

X.

That the petitioners have plain, adequate and complete remedies at law for the enforcement or protection of their rights, if any, in case said statutes or any of the provisions thereof are unconstitutional or invalid.

XI.

That no sufficient grounds or facts are set forth in said petition to show that the petitioners or any of them are or is or would be but for the prevention of a court of equity by a restraining order or otherwise likely to be or in danger of [67½] being prosecuted under the provisions or any of them of the said statutes of the Territory of Hawaii or that said provisions or any of them are likely to be or to be attempted to be enforced against the petitioners or any of them.

XII.

That said petition fails to show that any of said petitioners has not a permit or has not paid the fee provided for in said statutes or has failed to comply with any of the provisions of said statutes or cannot obtain such permit or cannot comply with any or all of the provisions of said statutes.

XIII.

That, so far as appears from said petition, none of the petitioners are entitled in or by these proceedings to question the constitutionality or validity of said statutes of the Territory of Hawaii or of any of the provisions thereof.

XIV.

That the invalidity or unconstitutionality of a

statute is not of itself or alone a ground of equity jurisdiction, and that a court of equity has no jurisdiction to restrain or enjoin the enforcement of a statute merely on the ground of its invalidity or unconstitutionality.

XV.

That said statutes of the Territory of Hawaii and said Rules and Regulations of the Department of Public Instruction are constitutional and valid in all respects.

XVI.

That a court of equity is without jurisdiction to restrain or enjoin the prosecution of criminal proceedings except under special circumstances and that no such special circumstances are shown by the petition as would justify the issuance of a restraining order or injunction against the prosecution of criminal proceedings [68] under said statutes of the Territory of Hawaii or any of the provisions thereof.

XVII.

That said petition does not show that this is a case in which a court of equity could take or exercise jurisdiction on the ground of preventing a multiplicity of suits or actions.

XVIII.

That none of the petitioners can properly bring or maintain said petition on behalf of any of the teachers employed in the schools mentioned in said petition; that none of said petitioners can bring or maintain said petition on behalf of any of the parents of children attending said schools or any of

them; that none of said petitioners can bring or maintain said petition on behalf of any other Japanese Language Schools or the owners or members thereof.

XIX.

That said petition fails to show that any of the teachers of the petitioners' schools or any of them has not a permit of the kind mentioned in Section 393 of Revised Laws of Hawaii, 1925, mentioned in said petition or that any of the teachers, if having no such permit, cannot obtain such permit or, if any of said teachers have not or cannot obtain such permit, that said petitioners or any of them cannot employ in sufficient numbers and of sufficient qualifications for their purposes teachers who have such permits.

XX.

That said petition fails to show that the teachers or any of them of said schools or any of them are or is or would be but for the prevention by a court of equity by a restraining order or otherwise likely to be or in danger of being prosecuted under [69] the provisions or any of them of the said statutes of the Territory of Hawaii or that said provisions or any of them are likely to be or attempted to be enforced against said teachers or any of them.

XXI.

That cases are pending in the courts of the Territory of Hawaii for the determination of the validity and constitutionality of Act 30 of the Special Session Laws of 1920 as amended by Act 171 of the

Session Laws of 1923 of the Territory, referred to in said petition, and Act 36 of said Special Session Laws, not referred to in said petition.

This motion is based on the record herein and the affidavits of the respondent William B. Lymer, Attorney General of the Territory of Hawaii, and of Henry B. Schwartz, inspector or supervisor of the Foreign Language Schools under the Department of Public Instruction of the Territory of Hawaii, which affidavits are hereto attached and made part hereof.

Wherefore these respondents move this Honorable Court to dissolve said temporary restraining order, or, in case the Court should find that the same should not be dissolved *in toto,* to modify it to the extent to which the Court may find that the same should not be made to apply to the provisions or any of them of said statutes of the Territory of Hawaii or to the respondents or their subordinates or any of them or their acts or actions thereunder.

Dated at Honolulu, June 17, 1925.

(S.) WILLIAM B. LYMER,
Attorney General.

(S.) FREAR, PROSSER, ANDERSON & MARX,
Attorneys for Respondents.

Due service of a copy of the within motion this day admitted.

Dated, June 17, 1925.

LIGHTFOOT & LIGHTFOOT,
(S.) J. B. P.
J. B. POINDEXTER,
Attys. for Plaintiffs. [70]

AFFIDAVIT OF WILLIAM B. LYMER.

Territory of Hawaii,
City and County of Honolulu,—ss.

William B. Lymer, being first duly sworn, deposes and says:

That he is the Attorney General of the Territory of Hawaii and one of the respondents in the above-entitled cause.

That, as this affiant is informed and believes, although Act 30 of the Laws of the Special Session of the Legislature of 1920 of the Territory of Hawaii, mentioned in the petition in the above-entitled cause, was approved on November 24, 1920, and took effect on July 1, 1921, and continued in force thereafter unamended until the amendment thereof of May 2, 1923, by Act 171 of the Session Laws of 1923, all or practically all of the foreign language schools and the members and teachers thereof, including the petitioners in the above-entitled cause, observed and complied with the provisions of said Act until its amendment aforesaid; that no prosecutions or legal proceedings were instituted for the enforcement of any such

provisions and no suit [71] was instituted by any of said schools, members or teachers to test the validity or constitutionality of any of said provisions until the Department of Public Instruction made certain regulations, which were afterwards embodied in said Act 30 by said Amendatory Act 171 and were substantially the same as the third, fourth and fifth paragraphs of Section 396 of the Revised Laws of Hawaii, 1925, whereupon one of said schools, to wit, the Palama Japanese Language School and certain members thereof, instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii, on or about December 28, 1922, to enjoin the enforcement of said Act 30 and said regulations, and eight or so other Japanese Language Schools thereafter intervened and joined as petitioners in said suit; that, the Circuit Judge who tried the same having held that said Act 30 and also said regulations corresponding to the fifth paragraph of said Section 396 were constitutional and valid but that the Department of Public Instruction was without authority to make said other regulations corresponding to the third and fourth paragraphs of said Section 396, cross-appeals were taken to the Supreme Court of the Territory but were recently discontinued without prejudice.

That after said Act 30 was amended as aforesaid by said Act 171 on May 2, 1923, some sixteen Japanese Language Schools instituted a suit in equity in the Circuit Court of the First Circuit of

the Territory of Hawaii, on May 9, 1923, to enjoin the enforcement of the provisions of said Act 30 as amended by said Act 171 and thereafter from time to time other Japanese Language Schools intervened and joined as petitioners in said suit and some such schools withdrew as petitioners therefrom, the number of petitioner schools therein at present being about eighty-six; that a preliminary injunction was issued in such suit *ex parte* forbidding the respondents therein, the Attorney [72] General and Superintendent of Public Instruction of the Territory, from enforcing the provisions of said Act 30 as so amended, and said suit is still pending in said court and said preliminary injunction is still in force; that all but a few of the petitioning schools therein are petitioners herein and that all but a few of the petitioners herein are petitioners therein.

That no prosecutions or legal proceedings have at any time been instituted under or for the enforcement of any of the provisions of said Act 30 or of said Act 30 as amended by said Act 171 or as further amended by Act 152 of the Session Laws of 1925.

That in July, 1923, the Territory instituted prosecutions in the District Court of Honolulu under Act 36 of the Laws of said Special Session of 1920 against four teachers, to wit, three in the Palama Japanese Language School and one in the Kalihi Japanese Language School, for teaching in said schools respectively without the certificate provided for in said Act 36; that all the defendants therein, after demanding trial by jury, and plead-

ing to the jurisdiction, and demurring, were tried and convicted in said District Court and took appeals to the Circuit Court,—in one case on a point of law, in one case for trial by jury and in two cases waiving trial by jury; that in the first of said cases, the point of law (whether the defendant had a right to a trial by jury in the first instance) having been decided adversely to the appellant by the Supreme Court of the Territory of Hawaii, the judgment of the District Court was affirmed by the Circuit Court; that in another of said cases the defendant was tried and convicted in the Circuit Court and said case is now pending in the Supreme Court of the Territory of Hawaii upon a writ of error sued out by the defendant therein for the purpose of determining the validity and constitutionality of said Act 36; that the remaining two cases are still pending in the Circuit Court. [73]

That shortly after the institution of said prosecutions under Act 36, in July, 1923, said Palama and Kalihi Japanese Language Schools instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii to enjoin enforcement of the provisions of said Act 36 but, although the petitioners therein prayed for a preliminary injunction, the Circuit Judge having jurisdiction of the case decided after a hearing that said Act 36 was constitutional and valid and also that said schools could not bring or maintain said suit on behalf of the teachers in said schools and denied the application for such preliminary injunction.

That this deponent early in the month of May, 1925, informed counsel for the petitioners that he would co-operate with them in obtaining as speedily as possible a decision of the Supreme Court of the Territory on the validity of said Act 152, whether upon payment of the fee required by said Act and a suit by the payer thereof to recover the same or by a submission on agreed facts under the provisions of Sections 2513–2514 of said Revised Laws.

And further deponent sayeth not.

Dated at Honolulu, T. H., June 17, 1925.

(S.) WILLIAM B. LYMER.

Subscribed and sworn to before me this 17th day of June, 1925.

[Seal] (S.) RACHEL O'SULLIVAN,
Notary Public, First Judicial Circuit, Territory of Hawaii. [74]

AFFIDAVIT OF HENRY B. SCHWARTZ.

Territory of Hawaii,
City and County of Honolulu,—ss.

Henry B. Schwartz, being first duly sworn, deposes and says:

That he is the Territorial Supervisor of Foreign Language Schools under the Department of Public Instruction of the Territory of Hawaii.

That according to the latest information of the Department of Public Instruction and of this affiant there are now in the Territory of Hawaii 164 Foreign Language Schools, of which 10 are Korean, 10 are Chinese, and 142 are Japanese; that

of said schools all of the Korean, all of the Chinese and 58 of the Japanese have paid the fees for the current school year required by Act 30 of the Special Session Laws of 1920, as amended by Act 171 of the Special Session Laws of 1923, and as further amended by Act 152 of the Session Laws of 1925, Territory of Hawaii; that all of said Foreign Language Schools, including both those which have and those which have not paid such fees, have hitherto complied with some or all of the provisions of said laws, many complying with all of said provisions and others complying with some provisions and not with others.

That to the best of this affiant's information and belief [75] there are employed in said Foreign Language Schools approximately 400 teachers; that two kinds of licenses, certificates or permits have heretofore been issued and are now being issued under said Act 20 and under Act 36 of said Session Laws of 1920, for the purpose of authorizing persons to teach in the Foreign Language Schools, namely, basic or permanent certificates, which are issued to such teachers as have fully qualified, and conditional or temporary certificates, which are issued from year to year to such persons as have qualified to a certain extent but have not fully qualified; that at the present time there are outstanding for teachers of Foreign Language Schools 571 basic certificates and 38 conditional certificates, a total of 609, of which approximately 85% have been issued for teachers of Japanese Language Schools; that comparatively few applicants have

failed to obtain either basic or conditional teachers' certificates and that a considerable number who have not such certificates at the present time, some of whom have previously held conditional certificates and some of whom have not heretofore held any certificates, would now have certificates but for the fact that some of them did not apply to take the required examinations and that many of them, although they applied in 1923, did not appear and take the examinations, in many cases because, as this affiant is informed and believes, they were advised that it would be unnecessary for them to obtain such certificates in order to teach in the Foreign Language Schools.

That, according to the latest information of the Department of Public Instruction and of this affiant, with comparatively few exceptions all of the pupils of said Foreign Language Schools attend the public schools or equivalent private schools; that in said Foreign Language Schools only approximately 1.73% of the pupils are aliens and approximately 98.27% are citizens of the United States, and in the public schools of the Territory approximately [76] 2.4% of the pupils are aliens and approximately 97.6% are citizens of the United States; that the number of alien pupils in the Foreign Language Schools has diminished from year to year until in 1924 the total was 326, namely, 5 in the Korean, 70 in the Chinese, and 251 in the Japanese Language schools and in 76 of such schools all of the pupils were American citizens, namely, in 4 of the Chinese, 7 of the Korean and 65 of the Japanese

Language Schools; that the percentage of American pupils in the Foreign Language Schools is greatest in the lower grades and lowest in the higher grades, there being, for instance, 49 alien pupils in one Japanese High Schools.

Further deponent sayeth not.

Dated Honolulu, T. H. June 17, 1925.

(S.) HENRY B. SCHWARTZ,

Subscribed and sworn to before me this 17th day of June, 1925.

(S.) RACHEL O'SULLIVAN,

Notary Public, First Judicial Circuit, Territory of Hawaii. [77]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Notice of Presentation of Motion. Filed June 17, 1925 at 2 o'clock and 35 minutes P. M. Wm. L. Rosa, Clerk. By (S.) Wm. F. Thompson, Jr., Deputy Clerk. William B. Lymer, Attorney General, The Capitol, Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald Bldg., Attorneys for Defendants. [78]

NOTICE OF PRESENTATION OF MOTION.

To Messrs. Lightfoot & Lightfoot and J. B. Poindexter, Attorneys for Plaintiffs in the Above-entitled Case.

Please take notice that the undersigned will present for hearing in the above-entitled court, Honorable John T. DeBolt presiding, at two-thirty o'clock Friday afternoon, June 19, 1925, the motion of the defendants in the above-entitled case to dissolve or modify the restraining order heretofore issued in said case, a copy of which motion is herewith served on you.

(S.) WILLIAM B. LYMER,
Attorney General.

(S.) FREAR, PROSSER, ANDERSON & MARX,
Attorneys for Defendants.

Dated at Honolulu, June 17, 1925. [79]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Motion for Allowance of Preliminary Injunction, Affidavit of T. Iwanaga, and Notice of Presentation of Motion. Filed June 23, 1925, at 11 o'clock and 30 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot, and

J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs.

Copy of the within motion, affidavit and notice is hereby acknowledged this 23 day of June, 1925.

FREAR, PROSSER, ANDERSON & MARX.

By (S.) W. F. FREAR,
Attorneys for Defendants. [80]

NOTICE OF PRESENTATION OF MOTION FOR ALLOWANCE OF PRELIMINARY INJUNCTION.

To the Honorable W. B. Lymer, and to Messrs. Frear, Prosser, Anderson & Marx, Attorneys for Said Defendants.

Please take notice that the undersigned will present for hearing in the above-entitled court, the Honorable John T. DeBolt presiding, on Wednesday, the 24th day of June, 1925, at 2 o'clock in the afternoon of said day, the motion of the plaintiffs in the above-entitled cause for a temporary injunction.

Dated at Honolulu, this 23d day of June, 1925.

LIGHTFOOT & LIGHTFOOT,
By (S.) J. LIGHTFOOT,
(S.) J. B. POINDEXTER,
Attorneys for Plaintiffs. [81]

MOTION FOR ALLOWANCE OF PRELIMINARY INJUNCTION.

Come now the plaintiffs in the above-entitled cause, by their attorneys, Lightfoot & Lightfoot and J. B. Poindexter, Esq., and move this Honorable Court that the temporary injunction, prayed for in the bill filed herein, be granted on the ground that unless the defendants in said cause are enjoined, as prayed for in said bill, the said plaintiffs will suffer irreparable and immediate harm and injury.

This motion is based on the record in said cause and on the affidavit of T. Iwanaga, hereto attached and made a part hereof and to which reference is hereby made.

Dated at Honolulu, this 23d day of June, 1925.

LIGHTFOOT & LIGHTFOOT,
By (S.) J. LIGHTFOOT,
(S.) J. B. POINDEXTER,
By J. LIGHTFOOT,
Attorneys for Plaintiffs. [82]

AFFIDAVIT OF T. IWANAGA IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION.

United States of America,
Territory of Hawaii,—ss.

Now comes T. Iwanaga and being first duly sworn on oath deposes and says:

That he is one of the plaintiffs in the above-entitled cause.

That there is not now pending in any Circuit Court of the Territory of Hawaii or in the Supreme Court of said Territory of Hawaii any suit or action for the purpose of determining the constitutionality or otherwise of Act 152 of the Session Laws of 1925 and the Rules and Regulations referred to in the bill filed herein.

That during the pendency of the suits to determine the constitutionality of Act 30 of the Session Laws of 1920 and Act 171 of the Session Laws of 1923, the then attorney general of the Territory of Hawaii, to wit: John Albert Matthewman, through the public press and otherwise, gave notice that all persons conducting Foreign Language Schools without compliance with the provisions of said Act 30 and said Act 171 as well as all teachers teaching in said schools would be prosecuted [83] for so conducting said schools and so teaching in said schools; that the property of said persons would be seized to pay the fines that would be imposed upon such persons and teachers and that such persons and teachers would be committed to jail to work out such fines in case they did not have sufficient property to pay the same.

That under said Act 152 of the Session Laws of 1925, it is provided that no foreign language school shall be conducted in the Territory unless under a written permit therefor from the Department of Public Instruction nor unless the fees therefor shall have been paid as provided in said Act, nor shall such permit be issued unless such fees shall have been paid. The said Act further provides

that on or before the first day on which any Foreign Language School shall be conducted, after May 10, 1925, the fees provided for in said Act shall be paid, said fee being computed as nearly as may be at the rate of one dollar per pupil at the estimated attendance of pupils at such school during the period during which such school was conducted in the next preceding year; that said Act further provides that all officers, all teachers and all members of any committee or governing board of any such school, and in case such school is conducted by or for a corporation or a voluntary association or other group of persons, all members or associates of such corporation, association or group, shall be deemed to be participants in conducting said school. The said Act further provides that if any such school shall be conducted at any time without such fee having been paid for conducting the same, the Territory may recover such fee in a civil action against any person, persons or corporation who or which so conducted and so participated in conducting such school, and for that purpose if such school is conducted or if it is conducting or is participated in by a corporation or a voluntary association or other group of persons, such action may be [84] brought against such corporation or association or group in its corporate or associate or common name with or without joining any or all individual defendants who may be liable for such fee and in case of such association or group process may be served on any officer or teacher or any member of a committee or

governing board or on any member or associate of such school, association or group and any judgment recovered against the corporation or association or group as such may be enforced against the property of the members, associates of such association or group, as the case may be, and against the individual property of any of the officers, teachers, members of any committee or governing board or members or associates of such school, corporation, association or group who shall have been served with process or who shall have appeared in the action in the same manner and to the same extent as if all had been named as defendants. That said Act further provides that the civil and penal remedies under this chapter shall be concurrent and not exclusive of the other;

That under the provisions of said Act 152 the fees referred to above would have to be repaid on or before the 1st day of September, 1925.

That the said schools and the members thereof were unwilling and unable to pay the said fee.

That affiant was informed by Mr. J. Lightfoot, one of the attorneys for plaintiffs, and upon such information alleges and avers, that in a conversation had with the Honorable William B. Lymer, one of the defendants above named, and then Attorney General of the Territory of Hawaii, that unless the said fees were paid in whole or in part before the said 10th day of May, 1925, he, the said Attorney General, would proceed against any foreign language school which had not paid said fees, criminally and civilly, as in said Act 152 provided.

93

That upon the receipt of said information, all of the schools, the members of which are parties plaintiff herein, [85] were afraid that the said threats of prosecution and suits would be carried out against them and were unwilling to conduct their said schools in defiance of said Act 152, and thereupon all of said schools closed their doors and excused their pupils and teachers from attendance until relief could be had by the injunctive process of this Honorable Court; that unless the said defendants be enjoined from enforcing the provisions of said Act 30 of the Session Laws of 1920 as amended in 1923 and 1925, and unless such injunctive relief be immediately afforded, the scholars belonging to said schools will be scattered, the teachers will seek other occupation and the said schools and the members thereof will be utterly ruined.

That in said Act 30 of the Session Laws of 1920, as amended, it is provided as follows:

> "The term 'Foreign Language School' as used in this Chapter, shall be construed to mean any school which is conducted in any language other than the English language or Hawaiian language except Sabbath schools. All subdivisions or activities under the direction, management or supervision of any foreign language school, whatever language may be used in said division and or activities, shall be subject to the provisions of this chapter."

That under the said provision and under the rules and regulations referred to in said bill of

complaint, the foreign language schools named in said bill would be unable to conduct their kindergartens; that the elimination of said kindergarten grades of said schools would mean the absolute ruin of said schools by reason of the fact that the first grade of said schools is generally recruited from said kindergarten grade.

That it is provided in said Act that no person shall teach in a foreign language school or shall exercise or perform administrative powers at said school unless he shall have obtained a permit from the Department of Public Instruction so to do and [86] said Act further provides that no permit shall be granted unless and until the Department is satisfied that the applicant for the same is possessed of the ideals of democracy, knowledge of American history and institutions, and knows how to read, write and speak the English language.

That in the schools referred to in said bill, which are conducted for each grade for one hour for each school day, nothing contrary to American history and American institutions and principles of democracy is taught, the instruction being confined to the speaking, reading and writing of the Japanese language; that while the Department of Public Instruction, under the said Acts, must be satisfied that the said teachers and others can speak, read and write the English language, there is no provision that said teachers shall be proficient in the art of teaching the Japanese language for which they are employed and paid, and that the said provisions requiring a knowledeg of the English lan-

guage and of American institutions and principles of democracy have no value to the plaintiffs in this case or the schools of which they are members; that unless restrained by this Honorable Court, under the said Acts, the Department of Public Instruction will be able to deprive the said schools of teachers proficient in the Japanese language to the ruination of said schools.

That in said Acts and said Rules and Regulations, it is provided that the Department of Public Instruction is authorized to prepare text-books for use in the foreign language schools of the Territory; that affiant is informed and believes, and upon such information and belief alleges and avers that some text-books have been prepared by the said Department for use in the Japanese Language Schools and that said text-books were so filled with errors that it was impossible to use the same in any school and that unless restrained by this Honorable Court, the said Department will insist upon the said schools adopting the text-books [87] prepared and authorized by it, the use of which text-books so prepared by the Government and filled with errors as aforesaid, would tend to the immediate ruination of the said Japanese Language Schools.

That in said Acts, it is provided that before the said permit will be granted, the applicants for said permit must sign a pledge that the applicant will, if granted the permit, abide by and observe the terms of the said Acts and the Regulations and orders of the Department of Public Instruction; that if the said requirement of a pledge is insisted

upon by the said Department, it will be impossible for the said schools and the members thereof, to secure teachers for the said schools competent to teach the Japanese language and the said schools will be immediately ruined.

That in the schools represented by plaintiffs there are about twelve thousand four hundred pupils and said schools employ about one hundred ninety-two teachers; that said teachers are paid and said schools are maintained from voluntary contributions and from the fees of the children attending said schools; that the provisions of said Act 152 of the Session Laws of 1925 are so drastic that the parents of children will be afraid to pay tuition fees and other persons will be afraid to contribute to the funds of said schools lest they be subjected to the pains and penalties provided in said Act, and that, therefore, unless immediate relief is afforded by this Honorable Court, the said schools will be unable to pay the teachers' salaries and the expenses of conducting said schools and the property of plaintiffs in said schools will be utterly destroyed.

And further affiant saith not.

(S.) T. IWANAGA.

Subscribed and sworn to before me this 23d day of June, 1925.

[Seal] (S.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory of Hawaii. [88]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Defendants' Objection to Allowance of Preliminary Injunction. Filed July 7, 1925, at 9 o'clock and 00 Minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. William B. Lymer, Attorney General, The Capitol, Frear, Prosser, Anderson & Marx, 507 Stangenwald Building, W. F. Frear, Attorneys for Respondents. [89]

DEFENDANTS' OBJECTION TO ALLOWANCE OF PRELIMINARY INJUNCTION.

Come now the defendants in the above-entitled cause and jointly and severally object to the granting of the motion for allowance of preliminary injunction heretofore filed herein by or on behalf of the plaintiffs, upon the following, among other grounds:

I.

That no sufficient grounds appear which would justify this court as a court of equity in the issuance of such preliminary injunction.

II.

That the plaintiffs have plain, adequate and complete remedies at law for the enforcement or protection of their rights, if any, in case the statutes, rules and regulations or any of the provisions thereof in question are unconstitutional or invalid.

III.

That it does not appear that the plaintiffs or any

of them would suffer irreparable damage by the enforcement of [90] the provisions or any of them of said statutes or but for the issuance of a preliminary injunction herein.

IV.

That the invalidity or unconstitutionality of a statute is not of itself or alone a ground of equity jurisdiction, and that a court of equity has no jurisdiction to restrain or enjoin the enforcement of a statute merely on the ground of its invalidity or unconstitutionality.

V.

That said statutes of the Territory of Hawaii and said Rules and Regulations of the Department of Public Instruction are constitutional and valid in all respects.

VI.

That a court of equity is without jurisdiction to restrain or enjoin the prosecution of criminal proceedings except under special circumstances and that no such special circumstances are shown by the bill or affidavit or otherwise as would justify the issuance of a preliminary injunction against the prosecution of criminal proceedings under said statutes of the Territory of Hawaii or any of the provisions thereof.

VII.

That it does not appear that any direct injury or damage would result to the plaintiffs or any of them from the enforcement of the provisions of said statutes or any of them other than or apart

from judgments for the fees or sentences of fines for the violation of such provisions or any of them.

VIII.

That this is not a case in which a court of equity [91] may take or exercise jurisdiction on the ground of preventing a multiplicity of suits or actions.

IX.

That cases are pending in the courts of the Territory of Hawaii for the determination of the validity and constitutionality of Act 30 of the Special Session Laws of 1920 as amended by Act 171 of the Session Laws of 1923 of the Territory, referred to in this bill of complaint, and Act 36 of said Special Session Laws, not referred to in said bill.

X.

That, prior to the commencement of this suit, a preliminary injunction was issued *ex parte* by a Circuit Judge of the Territory of Hawaii in a suit in equity brought by the plaintiffs herein enjoining the Attorney General and the Superintendent of Public Instruction of the Territory of Hawaii from enforcing the provisions of Act 30 as amended by Act 171 mentioned in said bill, and that said preliminary injunction is still in force undissolved and unmodified.

XI.

That the plaintiffs are guilty of such delay and laches in the institution of this suit and in applying for an injunction against the enforcement of said statutes of the Territory of Hawaii as to preclude them from being entitled to the issuance of such

preliminary injunction, even if they would otherwise be entitled to the same.

XII.

That all of the plaintiff schools have for years complied and are still complying with some of the provisions of said statutes and others of the plaintiffs have complied and are complying with some of the other provisions of said statutes [92] and numerous others of the Foreign Language Schools are complying with all of the provisions of said statutes.

XIII.

That it does not appear that the plaintiffs or any of them are or is or would be but for the prevention of a court of equity by a preliminary injunction or otherwise likely to be or in danger of being sued or prosecuted under the provisions or any of them of the said statutes of the Territory of Hawaii or that said provisions or any of them are likely to be or to be attempted to be enforced against the plaintiffs or any of them, except the provisions as to said fees.

XIV.

That it does not appear that any of said plaintiffs has not a permit or has not paid the fee provided for in said statutes or has failed to comply with any of the provisions of said statutes or cannot obtain such permit or cannot comply with any or all of the provisions of said statutes.

XV.

That it does not appear that any of the plaintiffs are entitled in or by these proceedings to question

the constitutionality or validity of said statutes of the Territory of Hawaii or of any of the provisions thereof.

XVI.

That none of the plaintiffs can properly bring or maintain said bill on behalf of any of the teachers employed in the schools mentioned in said bill; that none of said plaintiffs can bring or maintain said bill on behalf of any of the parents of children attending said schools or any of them; that none of said plaintiffs can bring or maintain said bill on behalf of any other Japanese Language Schools or the owners or members thereof. [93]

XVII.

That it does not appear that any of the teachers of the plaintiffs' schools or any of them has not a permit of the kind mentioned in Section 393 of the Revised Laws of Hawaii, 1925, mentioned in said bill or that any of the teachers, if having no such permit, cannot obtain such permit or, if any of said teachers have not or cannot obtain such permit, that said plaintiffs or any of them cannot employ in sufficient numbers and of sufficient qualifications for their purpose teachers who have such permits.

XVIII.

That it does not appear that the teachers or administrative officers or any of them of said schools or of any of them are or is or would be but for the prevention by a court of equity by a preliminary injunction or otherwise likely to be or in danger of being prosecuted under the provisions or any of

them of the said statutes of the Territory of Hawaii or that said provisions or any of them are likely to be or attempted to be enforced against said teachers or any of them—except the provisions relating to fees.

This objection is based on the record in said cause and on the affidavits of William B. Lymer and Henry B. Schwartz which are hereto attached and hereby made a part hereof.

Dated at Honolulu this 7th day of July, 1925.

(S.) WILLIAM B. LYMER,
(S.) FREAR, PROSSER, ANDERSON & MARX,
W. F. FREAR,
Attorneys for Defendants. [94]

AFFIDAVIT OF WILLIAM B. LYMER.

Territory of Hawaii,
City and County of Honolulu,—ss.

William B. Lymer, being first duly sworn, deposes and says:

That he is the Attorney General of the Territory of Hawaii and one of the defendants in the above-entitled cause;

That, as this affiant is informed and believes, although Act 30 of the Laws of the Special Session of the Legislature of 1920 of the Territory of Hawaii, mentioned in the plaintiffs' bill in the above-entitled cause, was approved on November 24, 1920, and took effect on July 1, 1921, and continued in force thereafter unamended until the amendment thereof of May 2, 1923, by Act 171 of the Session

Laws of 1923, all or practically all of the Foreign Language Schools and the members and teachers thereof, including the petitioners in the above-entitled cause, observed and complied with the provisions of said Act until its amendment aforesaid;

That no prosecutions or legal proceedings were instituted [95] for the enforcement of any such provisions and no suit was instituted by any of said schools, members or teachers to test the validity or constitutionality or prevent the enforcement of any of said provisions until the Department of Public Instruction made certain regulations, which were afterwards embodied in said Act 30 by said amendatory Act 171 and were substantially the same as the third, fourth and fifth paragraphs of Section 396 of the Revised Laws of Hawaii, 1925, whereupon one of said schools, to wit, the Palama Japanese Language School and certain members thereof, instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii, on or about December 28, 1922, to enjoin the enforcement of said Act 30 and said regulations, and eight or so other Japanese Language Schools thereafter intervened and joined as petitioners in said suit; that the Circuit Judge who tried the same held that said Act 30 and also said regulations corresponding to the fifth paragraph of said Section 396 were constitutional and valid but that the Department of Public Instruction was without authority to make said other regulations corresponding to the third and fourth paragraphs of said Section 396; that thereupon cross-appeals were taken in

said case to the Superior Court of the Territory but were recently discontinued.

That after said Act 30 was amended as aforesaid by said Act 171 on May 2, 1923, some sixteen Japanese Language Schools instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii, on May 9, 1923, to enjoin the enforcement of the provisions of said Act 30 as amended by said Act 171 and thereafter from time to time other Japanese Language Schools intervened and joined as petitioners in said suit and some such schools withdrew as petitioners [96] therefrom, the number of petitioner schools therein at present being about eighty-six; that a preliminary injunction was issued in such suit *ex parte* forbidding the respondents therein, the Attorney General and Superintendent of Public Instruction of the Territory, from enforcing the provisions of said Act 30 as so amended, and said suit is still pending in said court and said preliminary injunction is still in force; that all or nearly all of the plaintiff schools therein are plaintiff schools herein and that all or nearly all of the plaintiff schools herein are plaintiff schools therein.

That no prosecution or legal proceedings, whether civil or criminal, have at any time been instituted under or for the enforcement of any of the provisions of said Act 30 or said Act 30 as amended by said Act 171 or as further amended by Act 152 of the Session Laws of 1925.

That in July, 1923, the Territory instituted prosecutions in the District Court of Honolulu by penal

summons (not arrests) under Act 36 of the Laws of said Special Session of 1920 against four teachers, to wit, three in the Palama Japanese Language School and one in the Kalihi Japanese School, for teaching in said schools respectively without the certificate provided for in said Act 36; that all the defendants therein, after successively demanding trial by jury and pleading to the jurisdiction and demurring, were tried and convicted in said District Court and took appeals to the Circuit Court,—in one case on a point of law, in one case for trial by jury and in two cases waiving trial by jury; that in the first of said cases, the point of law (whether the defendant had a right to a trial by jury in the first instance) having been decided adversely to the [97] appellant by the Supreme Court of the Territory of Hawaii on reserved questions, the judgment of the District Court was affirmed by the Circuit Court; that in another of said cases the defendant was tried and convicted in the Circuit Court and said case is now pending in the Supreme Court of the Territory of Hawaii upon a writ of error sued out by the defendant therein for the purpose of determining the validity and constitutionality of said Act 36; that the remaining two cases are still pending in the Circuit Court.

That shortly after the institution of said prosecutions under Act 36, in July, 1923, said Palama and Kalihi Japanese Language Schools instituted a suit in equity in the Circuit Court of the First Circuit of the Territory of Hawaii to enjoin enforcement of the provisions of said Act 36 but, although the

petitioners therein prayed for a preliminary injunction, the Circuit Judge having jurisdiction of the case decided after a hearing that said Act 36 was constitutional and valid and also that said schools could not bring or maintain said suit on behalf of the teachers in said schools and denied the application for such preliminary injunction; that thereafter said Judge reserved for the Supreme Court in said case the question whether the plaintiff schools could sue in their association names, they being unincorporated associations, and the Supreme Court upon submission of said question on briefs without argument held, on June 10, 1924, that said schools could not sue but that the petition or bill could be amended by substituting the names of the members of said associations for the names of the associations; that the plaintiffs in said case have taken no further proceedings therein.

That this deponent early in the month of May, 1925, [98] informed counsel, J. Lightfoot, Esq., for the plaintiffs that he would co-operate with him in obtaining as speedily as possible a decision by the Supreme Court of the Territory on the validity of said Act 152, whether upon payment of the fee required by said Act and a suit by the payer thereof to recover the same or by a submission on agreed facts under the provisions of Sections 2513–2514 of said Revised Laws and that he would permit as easy terms as possible for the payment of the fees in case any of the schools should find it difficult to pay the entire fee at once

That this affiant is uninformed as to what, if anything, John Albert Matthewman, formerly Attorney General of the Territory of Hawaii, said with reference to the enforcement of the provisions of said Acts 30 and 171 or how far he was correctly reported in the press, in so far as he was reported to have made statements on that subject, but this affiant says that said John Albert Matthewman is no longer Attorney General and that during his tenure of that office, which terminated on or about March 26, 1925, and before the enactment of said Act 152, neither he nor any other officer of the Territory ever instituted any civil or penal proceedings for the enforcement of either of said Acts 30 and 171, but did institute the four penal proceedings for the enforcement of Act 36 of the Special Session Laws of 1920 of the Territory of Hawaii, as above set forth herein, and although no injunction or restraining order has ever been issued against the enforcement of said Act 36 no other penal proceedings have been instituted thereunder and although a sentence, to wit, of Five Dollars, was imposed on the defendant by the Circuit Court in one of said penal proceedings [99] and no appeal was taken therefrom, no stops have been taken to enforce the payment of said fine in any way.

That this affiant intends to enforce the payment of the fees as provided in said Act 152; but that this affiant has not determined or given particular thought nor ever made any announcement as to what policy or course he will ultimately pursue in regard to the enforcement of the other provisions

of said Acts but he does say that he intends to take no steps towards any such enforcement so long as the preliminary injunction issued as hereinabove set forth by a Territorial Circuit Judge shall remain in force undissolved and unmodified and he further says that he intends to take no steps toward the enforcement of Sec. 3 of said Act 30 (R. L., Sec. 392) at least until the final determination of said case now pending in the Territorial Supreme Court and further that he sees no reason why he should ever enforce said Section so long as Section 1 of said Act 36 (R. L., Sec. 302) remains in force.

That Act 152 referred to in said affidavit specifically provides with reference to the fees thereby required to be paid that:

> "No injunction shall issue from, nor shall any suit be maintained in, any court for the purpose of restraining the determination of collection of any such fee or the prosecution of any penal proceeding for conducting or participating in conducting any such school without such fee having been paid; but any payor of any such fee who desires to contest the validity thereof may do so under the provisions of Section 1444, for which purpose the department shall be deemed a public accountant within the meaning of that section and Section 1436."

the said Sections 1444 and 1436 being the sections of those numbers of the Revised Laws of Hawaii, 1925.

That the fees required by said Act 152 of the Laws [100] of 1925 to be paid are the same or

substantially the same as the fees required to be paid by said Act 171 of the Laws of 1923,—the amendments made by said Act 152 consisting principally in the payment of such fees irrespective of whether a permit is sought or obtained or not and in making adequate provision for the remedies for the enforcement of the payment of such fees; and that if any of the schools or members thereof mentioned in the bill of complaint herein is now required to pay such fees in respect of the remainder of the current school year it is because they have not heretofore paid the same as they should have at the beginning of the current school year, as numerous other Japanese Language Schools as well as all the Chinese and Korean Language Schools did.

And further deponent saith not.

Dated at Honolulu, T. H., July 7th, 1925.

(S.) WILLIAM B. LYMER.

Subscribed and sworn to before me this 7th day of July, 1925.

[Seal] (S.) WM. F. THOMPSON, JR.,
Notary Public, First Judicial Circuit, Territory of Hawaii,

_____,
Deputy Clerk, United States District Court, Territory of Hawaii. [101]

AFFIDAVIT OF HENRY B. SCHWARTZ.

Territory of Hawaii,
City and County of Honolulu,—ss.

Henry B. Schwartz, being first duly sworn, deposes and says:

That he is the Territorial Supervisor of Foreign Language Schools under the Department of Public Instruction of the Territory of Hawaii.

That according to the official statistics of the Department of Public Instruction there are now in the Territory of Hawaii 164 Foreign Language Schools, of which 10 are Korean, 10 are Chinese, and 142 are Japanese; that of said schools all of the Korean, all of the Chinese and 58 of the Japanese have paid the fees for the current school year required by Act 30 of the Special Session Laws of 1920, as amended by Act 171 of the Session Laws of 1923 (Sections 390–399 of the Revised Laws of Hawaii, 1925), and as further amended by Act 152 of the Session Laws of 1925, of the Territory of Hawaii; that all [102] of said Foreign Language Schools, including both those which have and those which have not paid such fees, have hitherto complied with some or all of the provisions of said Laws, many complying with all of said provisions and others complying with some provisions and not with others.

That there are employed in all of said Foreign Language Schools approximately 400 teachers; that two kinds of licenses, certificates or permits have heretofore been issued and are now being issued under said Act 30 and under Act 36 of said Session Laws of 1920 (Secs. 302–305, Revised Laws of Hawaii, 1925), for the purpose of authorizing persons to teach in the Foreign Language Schools, namely, basic or permanent certificates, which are issued to such teachers as have fully qualified, and

conditional or temporary certificates, which are issued from year to year to such persons as have qualified to a certain extent but have not fully qualified; that at the present time there are outstanding for teachers of Foreign Language Schools 571 basic certificates and 38 conditional certificates, a total of 609, of which approximately 85% or upwards of 500 have been issued for teachers of Japanese Language Schools, as compared with a total of about 300 teachers alleged in the bill of complaint to be employed in said Japanese Language Schools; that comparatively few applicants have failed to obtain such certificates and that a considerable number who have not such certificates at the present time, some of whom have previously held conditional certificates and some of whom have not heretofore held any certificates, would not have certificates but for the fact that some of them did not apply to take the required examinations and that many of them, although they applied in 1923, did not [103] appear and take the examinations,—in many cases because, as this affiant is informed and believes, they were advised not to do so.

That with comparatively few exceptions all of the pupils of the said Foreign Language Schools attend the public schools of the Territory or equivalent private schools; that in said Foregn Language Schools only approximately 1.73% of the pupils are aliens and approximately 97.6% are citizens of the United States, while in the public schools of the Territory approximately 2.4% of the pupils are aliens and approximately 97.6% are citizens of the

United States; that the number of alien pupils in the Foreign Language Schools has diminished from year to year until in 1924 the total was 326, namely, 5 in the Korean, 70 in the Chinese, and 251 in the Japanese Language Schools and in 76 of such schools all of the pupils were American citizens, namely, in 4 of the Chinese, 7 of the Korean and 65 of the Japanese Language Schools; that the percentage of American pupils in the Foreign Language Schools is greatest in the lower grades and lowest in the higher grades, there being, for instance 49 alien pupils in one Japanese High School.

That the plaintiff schools and the members thereof, in so far as they have failed to pay the fees required by law, have so failed because they were unwilling and not because they were unable to pay the same; that 78 of the Foreign Language Schools, including 58 of the Japanese Language Schools, have paid such fees for the current School year; that said fees are at the rate of only $1 per pupil per year, but that, as this affiant believes, the average cost per patronizing family per year of the Japanese Foreign Language Schools is upwards of $25 per year, as shown by extensive study and [104] investigation of the same by this affiant with respect to a considerable number of such schools; that the realizations from said fees are appropriated by the Legislature for the purpose of carrying out the Foreign Language School laws; that the law provides that the Department of Public Instruction may reduce such fees when it appears that the same as so reduced will be sufficient

for such purpose, and that, while the expense of carrying out such laws has probably been greater per year heretofore in the early years of the administration of such laws than it will be hereafter, it will probably be less in the near future and even at the present time, if such fees should be paid by all of such schools, probably the amount thereof could be reduced at once or in the near future, and the attorney, J. Lightfoot, Esq., for the plaintiffs was so informed early in May, 1925, by the Superintendent of Public Instruction in the presence of this affiant; that at the same time the Attorney General informed said attorney for the plaintiffs that he would allow the payment of the fees in instalments in case any of the schools found it difficult to pay the same all at once and that he would co-operate in obtaining an early decision on the validity of the portions of the laws relating to fees whether in a suit to recover the same if paid under protest or by a submission on agreed facts to the Supreme Court of the Territory.

That, as this affiant is informed and believes, thus far in connection with the litigation instituted by or on behalf of the plaintiff schools for the prevention of the enforcement of the Foreign Language School laws, there has been collected and expended an amount greater than the amount which the plaintiff schools would have paid in fees if they had paid the same as required by law ever since the requirement of the payment of [105] said fees, that is, for the last two years. As foundation for such belief this affiant relies, among other things, on the

following statement translated from a statement published in the Japanese Language in the February 13, 1925, number of the "Hawaii Hochi," one of the Japanese Language newspapers which is supporting such litigation, the said statement showing such amount for the period February, 1923, to December 31, 1924; that this affiant is uninformed as to what additional amounts have been collected or expended for such purpose before or since said period but is informed that large additional amounts have been and are now being raised:

"The treasurer's report of the Shiso Kisei Kai (Society for prosecution of test case) from February, 1923, to December 31, 1924, is as follows:

RECEIPTS.

Fee for Test Case (from the various schools)	$25,414.01
Contribution (Taisho Printing Company)	35.00
Loan from Asano Chuya Bank	32.94
	$25,481.95

DISBURSEMENTS.

Attorneys' Fees	$19,000.00
Printing Expenses	468.29
Clerks' Salaries (For 23 months)	1,150.00
Stationery & Supplies	47.41
Fees for instituting test cases	745.75
Correspondence Expenses	120.35
Campaign Fees	950.00
Traveling and Miscellaneous Expenses	1,436.15

Equipment (Office Furniture)	64.00
Secret Service Money deposited at Bishop Bank	1,500.00
	$25,481.95

Respectfully submitted,
SOCIETY FOR PROSECUTING TEST CASE OF FOREIGN LANGUAGE SCHOOLS.
By EIJIRO NIEHIJIMA,
DAIZO KAWAMURA,
TOKUICHI TSUJI,
DENZO NAKAYAMA,
(Treasurers.)"

Approved by:
TOMIZO TANIGAWA,
ENZO HASEGAWA,
(Auditors.) [106]

That, in the opinion of this affiant from his intimate knowledge of the Foreign Language Schools as a whole and the situation with respect to the large number of such schools which have complied with the Foreign Language School laws, the scholars belonging to the plaintiff schools will not be scattered; the teachers thereof will not seek other occupations; nor the members of said schools be utterly or at all ruined—in case the enforcement of said laws and rules and regulations is not restrained.

That such of the plaintiff schools as conduct kindergartens would not be prevented from conducting the same by compliance with the said For-

eign Language School laws or the rules and regulations referred to in said affidavit; and, further, that the elimination of said kindergartens entirely would not mean the absolute ruin of said schools or materially affect the same; that a number of the Foreign Language Schools, including many of the plaintiff schools, conduct no kindergartens and that the number of pupils in the first grade of such Foreign Language Schools is in no way decreased thereby and that the entire public school system is conducted without kindergarten grades and without thereby diminishing the number of pupils entering their first grades.

That the requirement of the qualifications for teachers in the Foreign Language Schools, as set forth in said Acts is, in the opinion of this affiant, very important and advisable and, in the opinion of this affiant, it is not true that the Department of Public Instruction, unless restrained by this Honorable Court, will be able to deprive said schools of teachers proficient in the Japanese language or to the ruination or to the injury of said schools; that, as shown [107] above herein, many more teachers hold permits to teach in the Japanese Language Schools than there are positions to be filled and from the taking effect of said Act 30 on July 1, 1921, until December, 1922, nearly all of the teachers of the Foreign Language Schools received permits to teach in such schools and since then that has generally been true of the numerous schools that have undertaken to comply with said laws and this affiant believes to a large extent in the cases of the plaintiff

schools, and that a large portion of such teachers hold basic or permanent permits and others hold conditional or temporary permits and many others would hold the same but for the fact that they have refrained from taking the required examinations or applying for such permits;

That although the Department of Public Instruction has caused text-books to be prepared for use in the Foreign Language Schools of the Territory, the preparation of those for use in the Japanese Language Schools being prepared, under the supervision of this affiant, by a number of prominent and highly qualified teachers in such Japanese Language Schools, and although in the first edition of said text-books a number of errors were found, such books have been thoroughly revised and are now reasonably free from errors and are now in use in a very large number of the Japanese Language Schools, to the satisfaction of the teachers, parents and children, and have proved to be more valuable text-books than were formerly used in such school and than are used in the plaintiff schools and have greatly increased the interest of all in the teaching and studying of the Japanese language; that such text-books formerly used in such schools and still used mainly in the plaintiff schools were published in Japan and not only contain errors but [108] are pedagogically of inferior quality and are less suitable in their context matter for pupils who are American citizens; and that the statement regarding the Foreign Language Schools in this Territory set forth in pages 107–143 of "A Survey of

Education in Hawaii" made under the direction of the Commissioner of Education of the United States and published as "Bulletin, 1920, No. 16" at the Government Printing Office, Washington, D. C., in 1920, is substantially a correct statement, which statement is hereby incorporated herein by reference.

That instruction in said Japanese Language Schools is not and cannot be confined to the speaking, reading and writing of the Japanese language, but extends to many subjects and even in so far as it is intended to have for its object the speaking, reading and writing of said language, the teaching of that is and must be largely through the medium of stories whether of history or fiction and in other ways than the mere teaching of letters and words and sentences.

That the requirement of the pledge referred to in said Acts will not prevent the schools or the members thereof from securing teachers for such schools sufficient in number and competent to teach the Japanese language and will not ruin or injure said schools; that experience in the past has shown that the requirement of such pledge has not been prejuditial to either said schools or said teachers, nor has any applicant for a permit to teach ever objected to the making of such pledge or requested to be excused from making the same, and, as this affiant understands, the pledge requires only the observance of the provisions of said laws and rules and regulations which are required to be observed in any event whether the pledge is taken or not, and that the

[109] person making such pledge shall so direct the minds and studies of the pupils in said schools as will tend to make them good and loyal American citizens and will not instruct or permit said pupils to receive instruction in such schools in any way inconsistent therewith and that, as shown by the bill of complaint herein, the plaintiff schools claim that they are all complying with such requirement.

That, in the opinion of this affiant, the parents of children will not because of the provisions of said Act 152 be afraid to pay tuition fees nor will other persons be afraid to contribute to the funds of such schools and this affiant denies that said schools will, unless immediate relief is afforded by this Honorable Court, be unable to pay the teachers' salaries and the expenses of conducting said schools, and denies that the property of plaintiffs in said schools will be utterly or at all destroyed.

That, as this affiant is informed and believes, none of the plaintiff schools were in session from May 10, to June 14, 1925, that they opened on or about June 15, 1925, and continued in session for a brief period but have since all closed for the summer vacation.

And further affiant saith not.

(S.) HENRY B. SCHWARTZ.

Subscribed and sworn to before me this 6th day of July, 1925.

[Seal] (S.) B. N. KAHALEPUNA,
Clerk, Circuit Court, First Judicial Circuit, Territory of Hawaii. [110]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Affidavit of J. Lightfoot. Filed July 8, 1925, at 9 o'clock and 52 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs.

Service of a copy of the within affidavit is hereby acknowledged this 8th day of July, 1925.

FREAR, PROSSER, ANDERSON & MARX.

By (S.) W. F. FREAR,
Attorneys for Defendants. [111]

AFFIDAVIT OF J. LIGHTFOOT.

United States of America,
Territory of Hawaii,—ss.

Now comes J. Lightfoot and being first duly sworn, on oath, deposes and says: That he is one of the attorneys for plaintiffs in the above-entitled court and cause and files this affidavit in support of plaintiff's motion for preliminary injunction and in reply to portions of the affidavit of the Honorable William B. Lymer, Attorney General of the Territory of Hawaii, filed in said court and cause on the 7th day of July, 1925, in support of the defendants' objections to allowance of preliminary injunction.

That affiant was one of the attorneys of record in the various proceedings in equity filed in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, and one of the attorneys for the defendants in the criminal cases referred to in said affidavit.

That there are now pending in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in equity relating to said Foreign Language Schools, two suits, to wit: Equity No. 2520 and Equity No. 2538.

That in the said suit numbered Equity 2520 the constitutionality of Act 30 of the Session Laws of 1920 as amended by Act [112] 171 of the Session Laws of 1923 is attacked.

That in said suit numbered Equity 2538, the constitutionality of Act 36 of the Session Laws of 1920 is attacked.

That in each of the said suits, the petitioners are certain unincorporated associations appearing by their members and those thereunto authorized on behalf of themselves and all persons similarly situated.

That the parties respondent in each of said cases are John Albert Matthewman, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii.

That the parties petitioner in said suits are not the same as in the suit now pending in this Honorable Court.

That in the said suit Equity No. 2538, a demurrer was filed and the Honorable Frank Andrade, Judge of said Circuit Court, then presiding in equity, reserved to the Supreme Court of the Territory of Hawaii, certain questions regarding the right of unincorporated associations to sue by their members, and the said Supreme Court on the 10th day of June, 1924 in an opinion filed on said date and reported in 27 Hawaiian Reports 830, decided that "in the absence of an enabling statute, an unincorporated association cannot sue or be sued in its common or associate name" and further that "The designation of an unincorporated association as petitioner is a procedural defect and not one of substance and the court upon proper application therefor should permit an amendment." That the said decision is hereby referred to and made a part of this affidavit.

That John Albert Matthewman is not now Attorney General of the Territory of Hawaii and was not such Attorney General [113] at the date of the institution of the present proceedings.

That no suit is pending in any Court other than this Honorable Court involving the constitutionality of Act 30 of the Session Laws of 1920 as amended by Act 171 of the Session Laws of 1923 and as further amended by Act 152 of the Session Laws of 1925.

And further affiant saith not.

(S.) J. LIGHTFOOT.

Subscribed and sworn to before me this 7th day of July, 1925.

[Seal] (S.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory of Hawaii. [114]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Plaintiff's Motion to Strike from the Record Certain Portions of the Affidavit of Henry B. Schwartz Filed in Support of Defendants' Objection to Allowance of Preliminary Injunction. Filed July 8th 1925, at 8 o'clock and 57 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot, and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs.

Service of a copy of the within motion is hereby acknowledged this 8 day of July, 1925.

FREAR, PROSSER, ANDERSON & MARX.

By (S.) W. F. FREAR,
Attorneys for Defendants. [115]

PLAINTIFFS' MOTION TO STRIKE FROM THE RECORD CERTAIN PORTIONS OF THE AFFIDAVIT OF HENRY B. SCHWARTZ FILED IN SUPPORT OF DEFENDANTS' OBJECTION TO ALLOWANCE OF PRELIMINARY INJUNCTION.

Now come the plaintiffs above named, by their attorneys, Messrs. Lightfoot & Lightfoot and J. B. Poindexter, Esq., and move this Honorable Court for an order herein striking from the record in said court and cause certain portions of the affidavit of Henry B. Schwartz, which affidavit was filed on the 7th day of July, 1925, in support of defendants' objections to allowance of preliminary injunction, on the ground that said portions of said affidavit are redundant, incompetent, irrelevant, immaterial, scandalous and impertinent. The portion of said affidavit being as follows:

First. All that portion of said affidavit beginning on the 6th line of the first page thereof, and ending on the 5th line of the second page thereof.

Second. All that portion of said affidavit beginning on the 6th line of the second page thereof and ending on the 3d line of the third page thereof. [116]

Third. All that portion of said affidavit beginning on the 4th line of the third page thereof and ending on the 20th line of the third page thereof.

Fourth. All that portion of said affidavitt beginning on the 21st line of the third page thereof

and ending on the 23d line of the fourth page thereof.

Fifth. All that portion of the said affidavit beginning on the 25th line of the fourth page thereof and ending with the last line of the fifth page thereof.

Sixth. All that portion of said affidavit beginning on the first line and ending on the 9th line of the sixth page thereof.

Seventh. All that portion of said affidavit beginning on the 23d line of the sixth page thereof and ending on the 13th line of the seventh page thereof.

Eighth. All that portion of said affidavit beginning on the 14th line of the seventh page thereof and ending on the 9th line of the eighth page thereof.

Ninth. All that portion of said affidavit beginning on the 8th line and ending on the 16th line of the ninth page thereof.

This motion is based on the record in said Court and Cause.

Dated at Honolulu this 7th day of July, A. D. 1925.

T. TOKUSHIGE et al.,
Plaintiffs.
By LIGHTFOOT & LIGHTFOOT,
(S.) J. LIGHTFOOT,
By (S.) J. B. POINDEXTER,
Their Attorneys. [117]

In the District Court of the United States, in and for the District and Territory of Hawaii. In Equity. No. 278. Bill for an Injunction. Order T. Tokishige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Filed July 21, 1925, at 9 o'clock and 05 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot and J. B. Poindexter, 8–9–9a–10 McIntyre Building, Honolulu, Attorneys for Plaintiffs.

Service of a copy of the within order is hereby acknowledged, this 2 day of July, 1925.

FREAR, PROSSER, ANDERSON & MARX,

By ————————,

Attorneys for Defendants. [118]

ORDER ALLOWING MOTION TO STRIKE PORTIONS OF HENRY B. SCHWARTZ'S AFFIDAVIT, Etc.

This cause coming on to be heard this day upon the motion for a preliminary injunction filed by the plaintiffs, the objections thereto filed by the defendants and the motion of plaintiffs to strike certain portions of the affidavit of Henry B. Schwartz attached to said objections to the issuance of preliminary injunction, J. B. Poindexter, Esquire, and J. Lightfoot, Esquire, of the firm of Lightfoot & Lightfoot, appearing for plaintiffs, the Honorable William B. Lymer, Attorney General of the Territory of Hawaii, appearing in his own behalf and on behalf of the other defendants named

in said bill, Walter F. Frear, Esquire, of the firm of Frear, Prosser, Anderson & Marx appearing for all of said defendants, and the Court having heard counsel for the respective parties and considered all the matters involved.

IT IS HEREBY ORDERED,

First. That plaintiffs' motion to strike from the records certain portions of the affidavit of Henry B. Schwartz filed in support of defendants' objection to allowance of preliminary injunction, which motion was filed in said court and cause, be and the same is hereby allowed and the portions of said affidavit are stricken from the record in said cause. [119]

Second. The defendants' objections to allowance of preliminary injunction filed in said court and cause on the 6th day of July, 1925, be and the same are hereby overruled.

Third. The motion for allowance of preliminary injunction filed by said plaintiffs in said court and cause be and the same is hereby granted for the reason that it appears to the court that said defendants intend to enforce against said plaintiffs, the pains, penalties and forfeitures provided in said Act 30 of the Session Laws of Hawaii of 1920 as amended by Act 171 of the Session Laws of Hawaii of 1923 and as further amended by Act 152 of the Session Laws of Hawaii of 1925, and that by such enforcement pending the final determination of the matters and things set forth in the bill of complaint filed herein, the said plaintiffs will suffer irreparable injury.

AND IT IS HEREBY FURTHER ORDERED that until the further order of this Court, the said defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, their deputies, assistants and subordinates and each and every one of them, are hereby enjoined and restrained from requiring the plaintiffs, their agents, servants or teachers to secure permits to conduct Foreign Language Schools, as required by Act 30 of the Session Laws of Hawaii of 1920 as amended by the Act of 1923 and further amended by the Act of 1925, or any permit whatsoever; from requiring or attempting to require plaintiffs, their agents, servants or teachers to pay the fees referred to in said Acts or to pay any fee whatsoever for conducting Foreign Language [120] Schools; from requiring plaintiffs, their agents, servants or teachers to make the reports referred to in said Acts; from requiring plaintiffs, their agents, servants or teachers to give the pledges referred to in said Acts, or any pledge affecting their duties in reference to Foreign Language Schools; from requiring plaintiffs, their agents, servants or teachers to conform to any regulation or regulations prescribed by the Department of Public Instruction relating to the subjects and courses of study of the entrance and attendance prerequisites and the qualifications of education, age, school attainments, demonstrated mental capacity and otherwise of the

pupils attending said Foreign Language Schools and from requiring plaintiffs, their agents, servants or teachers to use the text-books prescribed by said Department.

AND said defendants are further enjoined, until the further order of this court, from any manner enforcing against plaintiffs, their agents, servants and teachers the pains, penalties and forfeitures referred to in said Acts and from in any manner arresting or prosecuting or causing to be arrested or prosecuted, by civil or criminal proceedings, the plaintiffs, their agents, servants or teachers, on account of any alleged violation by them or any of them of the terms and provisions of said Acts and from in any manner and to any extent interfering with the property, business and affairs of plaintiffs for any alleged violation of said Acts.

AND IT IS FURTHER ORDERED that said plaintiffs do file in this court a bond with good and sufficient sureties in the penal sum of Twelve Thousand Five Hundred Dollars ($12,500.00) in the form and upon the conditions of the bond this day approved by the Court. [121]

Done in open court, this 21 day of July, A. D. 1925.

(S.) J. T. DeBOLT,
Judge, United States District Court in and for the District and Territory of Hawaii. [122]

In the District Court of the United States in and for the District and Territory of Hawaii. In

Equity. No. 278. Bill for an Injunction. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington et al., Defendants. Preliminary Injunction. Filed July 21, 1925, at 9 o'clock and 05 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. Lightfoot & Lightfoot and J. B. Poindexter, 8-9-9a-10 McIntyre Building, Honolulu, Attorneys for Plaintiffs. [123]

PRELIMINARY INJUNCTION.

The President of the United States of America:
To Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, GREETING:

The plaintiffs above named having filed their petition in the above-entitled suit praying for a preliminary injunction against you and each of you requiring you and each of you to refrain from certain acts hereinafter more particularly set forth and the said plaintiffs having filed in said court and cause their motion for a preliminary injunction, and the said defendants having filed therein their objections to the granting of such preliminary injunction and the plaintiffs having filed therein, their motion to strike certain portions of one of the affidavits attached to said objections, and the Honorable John T. DeBolt, Judge of the United States District Court in and for the District and Territory

of Hawaii, after hearing counsel for the respective parties and after consideration of said petition, motions and objections, having granted said prayer and said motions and overruling said objections in and by his order of this day,

NOW, THEREFORE, you, the said defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, your deputies, assistants and subordinates and each and every one of them, until the further order of this Court, are hereby enjoined and restrained from requiring the plaintiffs, their agents, servants and teachers to secure permits to conduct [128] Foreign Language Schools, as required by Act 30 of the Session Laws of Hawaii of 1920 as amended by the Act of 1923 and further amended by the Act of 1925, or any permit whatsoever; from requiring or attempting to require plaintiffs, their agents, servants or teachers to pay the fees referred to in said Acts or to pay any fee whatsoever for conducting foreign language schools; from requiring plaintiffs, their agent, servants or teachers to make the reports referred to in said Acts; from requiring plaintiffs, their agents, servants or teachers to give the pledges referred to in said Acts, or any pledge affecting their duties in reference to Foreign Language Schools; from requiring plaintiffs, their agents, servants or teachers to conform to any regulation or regulations prescribed by the Department of

Public Instruction relating to the subjects and courses of study or the entrance and attendance prerequisites and the qualifications of education, age, school attainments, demonstrated mental capacity and otherwise of the pupils attending said Foreign Language Schools and from requiring plaintiffs, their agents, servants or teachers to use the text-books prescribed by said Department.

AND said defendants are further enjoined, until the further order of this Court, from in any manner enforcing against plaintiffs, their agents servants and teachers the pains, penalties and forfeitures referred to in said Acts and from in any manner arresting or prosecuting or causing to be arrested or prosecuted, by civil or criminal proceedings, the plaintiffs, their agents, servants or teachers, on account of any alleged violation by them or any of them of the terms and provisions of said Acts and from in any manner and to any extent interfering with the property, business and affairs of plaintiffs for any alleged violation of said Acts. [129]

WITNESS the Honorable JOHN T. DeBOLT, Judge of the United States District Court in and for the District and Territory of Hawaii, at Honolulu, this 21st day of July, A. D. 1925.

By order of the Court:

[Seal] (S.) WM. L. ROSA.
Clerk, United States District Court.

Approved:

(S.) J. T. DeBOLT,
Judge. [130]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants. Preliminary Injunction Bond. Filed July 21, 1925, at 9 o'clock and 05 minutes A. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. [131]

PRELIMINARY INJUNCTION BOND.

WHEREAS, the plaintiffs in the above-entitled cause in their bill of complaint filed therein, dated June 13, 1925, prayed, among other things, that they be granted a temporary or preliminary injunction, and by their motion, dated June 23, 1925, filed in said cause, moved that the injunction so prayed for in their said bill be granted; and

WHEREAS, the above-entitled court has now granted or is about to grant said prayer and said motion but only upon condition that the plaintiffs should furnish to the defendants a bond in the nature of this bond and has now issued or is about to issue such injunction and has approved this bond as made in conformity with said conditions; [132]

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That we, T. Iwanaga, one of the plaintiffs in the above-entitled cause, as principal, and the other persons whose names are here-

unto subscribed, as sureties, are held and firmly bound unto the above-named defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, and their respective successors in office, in the sum of Twelve Thousand Five Hundred Dollars ($12,500.00), good and lawful money of the United States, to be paid to the said above-named defendants and their respective successors in office, for which payment well and truly to be made we hereby bind ourselves and our respective heirs, executors and administrators, jointly and severally, firmly by these presents, subject, however, to the limitations hereinafter set forth as to the liability of said sureties respectively.

THE CONDITION of this obligation is such that if the said plaintiffs shall well and truly pay or cause to be paid all such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained by said temporary injunction; and if, in case said bill of complaint shall be dismissed or this cause shall be discontinued or by reason of the dissolution or modification of said preliminary injunction or otherwise the said defendants and/or their successors in office shall cease to be enjoined or restrained by said injunction from collecting or enforcing the payment of the fees or any of them hereinafter mentioned or from instituting or prosecuting penal proceedings against persons for con-

ducting [133] or participating in conducting the respective schools listed in the Schedule hereto attached, which is hereby made part hereof, without such fees having been paid for or in respect of conducting such schools respectively, the said plaintiffs shall pay or cause to be paid to the Department of Public Instruction of the Territory of Hawaii the fees listed in said Schedule, the same being the fees determined by said Department as payable by, under or pursuant to the terms of Section 391 of the Revised Laws of Hawaii, 1925, as amended by Act 152 of the Session Laws of Hawaii of 1925, for or in respect of conducting, during the school year, or the unexpired part thereof, beginning September 1, 1924, and ending August 31, 1925, the schools of which the said plaintiffs are in said bill alleged to be members, and shall in such case pay also the fees, as and when they shall be so determined, for or in respect of the conducting of said schools during the school year, or part thereof, beginning September 1, 1924, and ending August 31, 1926, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, and this obligation is subject to the following limitation hereinabove referred to, that, while said principal and said sureties shall be jointly and severally bound as to said costs and damages exclusive of said fees, said sureties shall be jointly and severally bound as to said fees only in and to the amounts set opposite their respective signatures below.

AND PROVIDED FURTHER, and this obligation is subject to the following limitation hereinabove referred to, that, in case said defendants and/or their respective successors shall so cease to be enjoined or restrained for any reason or reasons other than that the provisions of said Section 391 as amended [134] by said Act 152 purporting to require the payment of said fees or any of them are valid or constitutional, said fees or any of them thereupon be paid to said Department under protest and suit be brought to recover the same as provided in said Section 391 as so amended, in which case the condition of this bond shall be deemed to have been performed to the extent of any and all such payments so made under protest to the same effect as if the same had not been made under protest.

IN WITNESS WHEREOF, we have hereunto set our hands this 20th day of July, 1925.

(S.) T. IWANAGA,
Principal.

	Amounts for which sureties are respectively bound as to fees.
(S.) E. NISHIJIMA	$1,000
(S.) K. HANAOKA	$ 500
(S.) T. TANIGAWA	$ 500
(S.) S. YAMAGUCHI	$ 500
(S.) Y. MATSUNAGA	$ 500
(S.) K. IBARAKI	$ 500
(S.) N. AOKI	$ 500
(S.) N. FUKUDA	$ 500

(S.) K. OKIMURA ..... $ 500

[135]

(S.) J. WATANABE ..... $ 500
(S.) U. YAMANE $1,000
(S.) F. KOOCHI ..... $ 500
(S.) M. OSAKI ..... $ 500
(S.) K. KIMOTO ..... $ 500
(S.) M. SEKIGUCHI ..... $ 500
(S.) S. MIYAMOTO ..... $ 500
(S.) I. AOKI ..... $ 500
(S.) K. YOSHIMURA ..... $ 500
(S.) M. SORANAKA ..... $ 500
(S.) S. UYEDA ..... $ 500
(S.) T. ESUJI ..... $ 500
(S.) D. KAWAMURA $1,000
_____, ___
_____, ___

Sureties.

Approved.

(S.) J. T. DeBOLT,
Judge. [136]

United States of America,
Territory of Hawaii,—ss.

Each of the above-named sureties,—

E. Nishijima,
K. Hanaoka,
T. Tanigawa,
S. Yamaguchi,
Y. Matsunaga,
K. Ibaraki,
N. Aoki,
N. Fukuda,
K. Okimura,
J. Watanabe,
U. Yamane,
F. Koochi,
M. Osaki,
K. Kimoto,
M. Sekiguchi,
S. Miyamoto,

I. Aoki, S. Uyeda,
K. Yoshimura, T. Tsuji and
M. Soranaka, D. Kawamura,

being first duly sworn, deposes and says:

That he is one of the sureties on the foregoing bond and that he is worth in property subject to execution within the Territory of Hawaii, over and above all his debts and liabilities, at least the amount set opposite his signature to the foregoing bond.

(S.) E. NISHIJIMA, (S.) F. KOOCHI,
(S.) K. HANAOKA, (S.) M. OSAKI,
(S.) T. TANIGAWA, (S.) K. KIMOTO,
(S.) S. YAMAGUCHI, (S.) M. SEKIGUCHI,
(S.) Y. MATSUNAGA, (S.) S. MIYAMOTO,
(S.) K. IBARAKI, (S.) I. AOKI,
(S.) N. AOKI, (S.) K. YOSHIMURA,
(S.) N. FUKUDA, (S.) M. SORANAKA,
(S.) K. OKIMURA, (S.) S. UYEDA,
(S.) J. WATANABE, (S.) T. TSUJI,
(S.) U. YAMANE, (S.) D. KAWAMURA.

Severally subscribed and sworn to before me this 20th day of July, 1925, by each of the persons whose names are subscribed to the foregoing oath.

[Seal] (S.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory of Hawaii. [137]

SCHEDULE REFERRED TO IN FOREGOING BOND.

Name of School.	Amount of Fee.
Aiea Japanese Language School	$ 236
Chuo Gakuen	713

Ewa Shion Japanese Language School 101
Haleiwa Taisho Japanese Language School .. 229
Hawaii Girls' School 112
Heeia Japanese Language School 103
Kahaluu Japanese Language School 61
Kailua Japanese Language School 55
Kakaako Old Japanese Language School 117
Kalihi Japanese Language School 242
Manoa Japanese Language School 205
Moiliili Japanese Language School 611
Palama Gakuen 566
Palama Japanese Language School 674
Pearl City Japanese Language School 181
Punaluu Japanese Language School 21
Puuloa Japanese Language School 70
Toyo Gakuen 226
Wahiawa Gakuen 368
Waiahole Japanese Language School 12
Waialua Japanese Language School 170
Waikiki Japanese Language School 100
Hawaii Japanese High School 431
Fort Educational Home 461
Central Kona Japanese Language School 214
Hakalau Japanese Language School 114
[138]
Halawa Japanese Language School 53
Hilea Japanese Language School 25
Hilo Educational Home 259
Hilo Japanese High School 105
Hilo Practical School 112
Honokaa Japanese Language School 131
Honomakau Japanese Language School 49

Honomu Gakuen 94
Honuapo Japanese Language School 26
Hookena Japanese Language School 28
Kaapahu Japanese Language School 47
Kapoho Japanese Language School 42
Kapulena Japanese Language School 31
Kaumana Japanese Language School 80
Keanou Educational Home 43
Kohala Japanese Language School 68
Kukaiau Japanese Language School 37
Kurtistown Japanese Language School 92
Naalehu Japanese Language School 59
Napoopoo Japanese Language School 88
Ninole Japanese Language School 146
Niulii Japanese Language School 75
Olaa 9-Mile Gakuen 208
Onomea Japanese Language School 54
Ookala Japanese Language School 70
Paauilo Japanese Language School 107
Pahala Educational Home 82
Pahala Japanese Language School 65
Pahoa Japanese Language School 155
Papaaloa Japanese Language School 102
Papaikou Educational Home 111
Papaikou Japanese Language School 176
Piihonua Japanese Language School 54
[139]
Wailea Japanese Language School 65
Wainaku Kyoritsu Japanese Language School 96
Wainaku Jodo Mission Japanese Language School 117
Anahola Japanese Language School 40

Hanalei Japanese Language School	41
Kapaa Educational Home	111
Kapaa Nissin Japanese Language School....	51
Kealia Educational Home	77
Kekaha Japanese Language School	134
Kilauea Japanese Language School	64
Koloa Japanese Language School	131
Koolau Japanese Language School	34
Lawai Japanese Language School	58
Makaweli Japanese Language School	126
Makaweli Camp 2 Japanese Language School.	41
Mana Japanese Language School	Paid
Haiku Japanese Language School	202
Honokowai Japanese Language School	27
Kahului Japanese Language School	163
Kaupakalua Japanese Language School	59
Kula Japanese Language School	68
Lahaina Dowa Educational Home	226
Makawao Japanese Language School	82
Olowalu Japanese Language School	27
Peahi Japanese Language School	107
Wahikuli Japanese Language School	18
Waihee Japanese Language School	41
Waikapu Japanese Language School	61
Wailuku Educational Home	222

[140]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al. Plaintiffs, vs. Wallace R. Far-

rington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruc[illegible]n of the Territory of Hawaii, Defendants. Defendants' Exceptions to Order and Preliminary Injunction. Filed July 21, 1925, at 2 o'clock and 45 minutes P. M. Wm. L. Rosa, Clerk. By (S.) Catherine E. Parks, Deputy Clerk. [141]

DEFENDANTS' EXCEPTIONS TO ORDER AND PRELIMINARY INJUNCTION.

Defendants' attorneys, having excepted orally in open court to the order and preliminary injunction hereinafter mentioned upon the making and issuance of the same and having stated at the same time that they would reduce such exceptions to writing and file the same, now and hereby except more formally and in writing to the order made by the Judge in the above-entitled cause dated and filed this day, and particularly to that part of said order wherein and whereby the said Judge allows plaintiff's motion to strike from the records certain portions of the affidavit of Henry B. Schwartz filed in support of defendants' objection to the allowance of the preliminary injunction and striking said portions from the record [142] in said cause; and also particularly to that part of said order wherein and whereby the said Judge overrules the defendants' objections to the allowance of the preliminary injunction, and also particularly to that part of said order wherein and whereby the said Judge grants

the plaintiffs' motion for the allowance of the preliminary injunction.

And the defendants' attorneys further hereby except to the allowance and issuance of the preliminary injunction dated this day and filed in said cause approved by the said Judge and signed by order of the Court by the clerk thereof.

And the defendants' attorneys hereby further give notice of their intention to appeal from said order and from the allowance and issuance of said preliminary injunction.

Dated at Honolulu, T. H., July 21, 1925.

(S.) MARGUERITE K. ASHFORD,
1st Deputy Attorney General.

(S.) FREAR, PROSSER, ANDERSON & MARX,
W. F. FREAR,
Attorneys for Respondents.

Due service of a copy of the within exceptions this day admitted.

Dated July 21, 1925.

(S.) LIGHTFOOT & LIGHTFOOT,
(S.) J. LIGHTFOOT,
Attorneys for Plaintiffs. [143]

T. Tokushige et al. vs. Wallace R. Farrington et al. Equity No. 278. Statement by Respondents. Filed July 29th, 1925, at 3 o'clock and 55 minutes P. M. Wm. L. Rosa, Clerk. By (Sgd.) Catherine E. Parks, Deputy Clerk. [144]

STATEMENT BY RESPONDENTS.

Mr. *FREAR.*—I would like to make a statement as to our position in this matter, to avoid any possible misunderstanding, and would like to have it taken down. The other day, opposing counsel handed us a form prepared by them of the proposed order granting the motion to strike portions of the affidavit of Dr. Schwartz, overruling our objections to the granting of a preliminary injunction, and granting the preliminary injunction, and also the form of the proposed preliminary injunction. The order did not purport to be made "*pro forma*" as your Honor expressed a desire that it should be. I called the attention of one of opposing counsel to this, and he said that he had had a talk with your Honor resulting in an understanding that "*pro forma*" should be omitted, but that your Honor would write a brief statement or opinion setting forth the arrangement. I was not present at the conversation, and do not know what was meant by "arrangement," and I may be needlessly concerned as to what may have taken place. But the thought occurred to me that perhaps they are trying to pave the way to make a contention in the Circuit Court of Appeals that the order is a consent order—in which case, of course, no appeal would lie from it.

When their motion for a preliminary injunction came on for hearing, opposing counsel pointed out that an appeal would lie under the statute from the order granting or refusing the preliminary injunction and that the losing side, whichever it was, would

appeal, and proposed that the argument be confined to the question of constitutionality, and that the rest of the argument be cut out. We pointed out that we could not safely do that, stating the reasons why, and suggested that if they wanted to cut out argument, they could cut it *all* out, provided, that the Court would deny the preliminary injunction, in [145] which case they could appeal, we, meanwhile, being at liberty to enforce the collection of the fees, or, if the Court should grant the preliminary injunction, it should do so only on condition that they give a bond covering, not only costs and damages as provided in the statute, but also specifically the payment of the fees.

We are not consenting to any order or decree. But we were willing to submit the matter without argument, that is, without further argument, for we have filed our objections to the granting of a preliminary injunction, and much of our argument on the motion to dissolve the temporary restraining order will apply to this matter also, provided we knew that the Court would not make any order that would jeopardize our rights. We cannot be put in the position of consenting to any order.

Mr. POINDEXTER.—We desire the bond to provide that, if the preliminary injunction is dissolved as to the fees on any other ground than the invalidity of the provision as to fees, we be permitted to pay the fees under protest and then sue to recover them back.

Mr. FREAR.—It seems that every time we get near to an agreement on the bond, they introduce

something else. This proposal was not made until after adjournment last time. Their proposal is a confession that they have an adequate remedy at law. The fees for the next year are coming due in September. This bond does not cover those. We would have to go out and sue for those. This preliminary injunction matter will not be settled in the Circuit Court of Appeals until after that. It would greatly jeopardize the interests of the Territory to have to postpone its collection of this year's fees until then, and then find that it might have to wait until the termination of suits in the Territorial Courts by the schools to recover the fees back. We have gone very far to accommodate them. We are having the burden of the appeal. We have consented that the bond be cut down to the fees of this year, provided the bond is absolute. The bond is small. We don't know what their sureties will be. If they want an injunction, and think they have a case, [146] they should be willing to stand by it. A number of weeks have been lost already. All this litigation is having a very disastrous effect upon the public morale. It seems to me that they ought to pay those fees, under protest, if they wish, but now they want to put us to all this expense and time and then say, "After all, we will pay this bond if you have a good case, ultimately in some other Court," and thus compel us to go all over it again. In our judgment, it seems to jeopardize the rights of the Territory. In such case we prefer to have further argument on the

expectation of finally convincing the Court that it should not grant a preliminary injunction.

We will, however, make this proposition as to the bond: that they include next year's fees, payable in September, as well as this year's fees, and in case it should be held that the provision as to the fees is valid, they then pay them all. But, in case the Court does not hold that the provision as to the fees is valid, then they may pay them under protest, and sue to get them back.

Dated: Honolulu, T. H., July 17, 1925. [147]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction, Equity No. 278. T. Tokushige et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Petition for Appeal—Order Allowing Appeal. Filed July 27, —25, at 9 o'clock and 30 minutes A. M. (Sgd.) Wm. L. Rosa, Clerk. William B. Lymer, Attorney General of Hawaii, The Capitol, Honolulu, T. H. Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald Building, Honolulu, T. H., Attorneys for Defendants-Appellants. [148]

PETITION FOR APPEAL—ORDER ALLOWING APPEAL.

The above-named defendants, Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, deeming themselves aggrieved by the order dated and entered July 21, 1925, allowing plaintiffs' motion to strike from the records certain portions of the affidavit of Henry B. Schwartz filed in support of defendants' objections to the allowance of a preliminary injunction and overruling the defendants' said objections and granting the plaintiffs' motion for the allowance of a preliminary injunction, and deeming themselves aggrieved also by the allowance and issuance of said preliminary injunction dated and filed on the same day, to all of which the defendants duly excepted, do hereby appeal from said order and from the allowance and issuance of said preliminary injunction to the United States Circuit Court of Appeals for the [149] Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith; and they pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and said allowance and issuance of said preliminary injunction were made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit, and that

said order may be reversed and said preliminary injunction dissolved.

Dated at Honolulu, T. H., July 27, 1925.

(Sgd.) WILLIAM B. LYMER,
Attorney General, Territory of Hawaii.
FREAR, PROSSER, ANDERSON & MARX,
By (Sgd.) W. F. FREAR,
Attorneys for Defendants-Appellants.

And now, to wit, on July 27, 1925, it is ordered that the appeal be and the same hereby is allowed as prayed for.

(Sgd.) J. T. DeBOLT,
District Judge. [150]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Assignment of Errors. Filed July 27, —25, at 9 o'clock and 30 minutes A. M. (Sgd.) Wm. L. Rosa, Clerk. William B. Lymer, Attorney General of Hawaii, The Capitol, Honolulu, T. H. Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald

Building, Honolulu, T. H., Attorneys for Defendants-Appellants. [151]

ASSIGNMENT OF ERRORS.

Now come Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, defendants below, appellants, and make and file this their assignment of errors:

1. The District Judge erred in allowing the motion of plaintiffs below, appellees, to strike from the record, and in striking from the record, certain portions of the affidavit of Henry B. Schwartz attached to the defendants' objections to the issuance of a preliminary injunction, and so erred as to each portion of said affidavit specified in said motion and so struck out.

2. Said Judge erred in overruling the plaintiffs' objections to the allowance of a preliminary injunction, and so erred as to each of said objections.

3. Said Judge erred in granting the plaintiffs' prayer and motion for a preliminary injunction. [152]

4. Said Judge erred in allowing and causing to be issued said preliminary injunction.

5. Said Judge erred in holding that sufficient grounds appeared which would justify the Court as a court of equity in the granting or issuance of said preliminary injunction.

6. Said Judge erred in holding as a reason for the allowance and issuance of said preliminary injunction that the defendants intend to enforce against the plaintiffs the pains, penalties and forfeiture provided in the Acts mentioned in said preliminary injunction and that by such enforcement pending the final determination of the matters and things set forth in the bill of complaint the plaintiffs would suffer irreparable injury.

7. Said Judge erred in enjoining or causing to be enjoined by said preliminary injunction the defendants from requiring the plaintiffs, their agents, servants or teachers, to secure permits to conduct foreign language schools as provided in said Acts or any permit whatsoever.

8. Said Judge erred in so enjoining or causing to be enjoined the defendants from requiring or attempting to require the plaintiffs to pay the fees referred to in said Acts or to pay any fee whatsoever for conducting foreign language schools.

9. Said Judge erred in so enjoining or causing to be enjoined the defendants from requiring the plaintiffs to make the reports referred to in said Acts.

10. Said Judge erred in so enjoining or causing to be enjoined the defendants from requiring the plaintiffs, their agents, servants or teachers to give the pledges referred to in said Acts or any pledge affecting their duties in reference to Foreign Language Schools.

11. Said Judge erred in so enjoining or causing to be enjoined the defendants from requiring the

plaintiffs, their agents, [153] servants or teachers, to conform to any regulation or regulations prescribed by the Department of Public Instruction relating to the subjects and courses of study or the entrance prerequisites and the qualifications of education, age, school attainments, demonstrated mental capacity and otherwise of the pupils attending said Foreign Language Schools and from requiring the plaintiffs, their agents, servants or teachers to use the text-books prescribed by said Department.

12. Said Judge erred in so enjoining or causing to be enjoined the defendants from enforcing against the plaintiffs, their agents, servants or teachers, the pains, penalties and forfeitures referred to in said Acts and from arresting or prosecuting or causing to be arrested or prosecuted the plaintiffs, their agents, servants or teachers, on account of any alleged violation by them or any of them of the terms or provisions of said Acts and from interfering with the property, business and affairs of plaintiffs for any alleged violation of said Acts.

13. Said Judge erred in so enjoining or causing to be enjoined the defendants, from requiring or attempting to require the plaintiffs, their agents, servants, or teachers, to pay the fees referred to in said Acts or to pay any fee whatsoever for conducting Foreign Language Schools, notwithstanding that the plaintiffs, their agents, servants and teachers, had and have plain, adequate and complete remedies at law for the enforcement or pro-

tection of their rights, if any, in case the provisions of said Acts relating to said fees are unconstitutional or invalid, and in not holding that they had and have such plain, adequate and complete remedies at law.

14. Said Judge erred in so enjoining or causing to be enjoined the defendants from enforcing each of the other provisions of said Acts and said regulations, and from doing each of the other things, mentioned in said preliminary injunction, notwithstanding [154] that the plaintiffs had and have plain, adequate and complete remedies at law for the enforcement and protection of their rights, if any, in case the said other provisions of said Acts and said regulations or any of them are unconstitutional or invalid, and in not holding that they had and have such plain, adequate and complete remedies at law.

15. Said Judge erred in enjoining or causing to be enjoined the defendants by said preliminary injunction as set forth therein, notwithstanding that it did not appear that the plaintiffs or any of them would suffer irreparable damage by the enforcement of the provisions or any of them of said Acts or of said regulations but for the issuance of said preliminary injunction, and in not holding that there was no sufficient showing of danger of such irreparable damage.

16. Said Judge erred in so enjoining or causing to be enjoined the defendants, notwithstanding that the invalidity or unconstitutionality of a statute is not of itself or alone a ground of equity jurisdiction

and notwithstanding that a court of equity has no jurisdiction to restrain or enjoin the enforcement of a statute merely on the ground of its invalidity or unconstitutionality, and in not so holding as to the jurisdiction of a court of equity.

17. Said Judge erred in so enjoining or causing to be enjoined the plaintiffs, notwithstanding that said Acts and regulations and the several provisions thereof are constitutional and valid, and in not holding that the same are constitutional and valid as to each of said provisions.

18. Said Judge erred in so enjoining or causing to be enjoined the defendants, notwithstanding that a court of equity is without jurisdiction to restrain or enjoin the prosecution of criminal proceedings under the circumstances appearing in this case, and in not holding that he, sitting as a court of equity, was so without jurisdiction to restrain or enjoin the prosecution [155] of criminal proceedings under said Acts.

19. Said Judge erred in so enjoining or causing to be enjoined the defendants as to the provisions of said Acts other than Act 152 of the Laws of 1925, notwithstanding that there were and are pending in the courts of the Territory of Hawaii cases instituted and maintained by the plaintiffs or some of them for the determination of the validity and constitutionality thereof and of Act 36 of the Special Session Laws of 1920.

20. Said Judge erred in so enjoining or causing to be enjoined the defendants as to the provisions of said Acts other than said Act 152, notwithstand-

ing that a preliminary injunction was issued *ex parte* by a Circuit Judge of the Territory of Hawaii in a suit in equity brought by most of the plaintiffs herein and others enjoining the Attorney General and the Superintendent of Public Instruction of the Territory of Hawaii from enforcing the provisions of said Acts other than said Act 152 and notwithstanding that said preliminary injunction so issued by said Circuit Judge is still in force undissolved and unmodified.

21. Said Judge erred in so enjoining or causing to be enjoined the defendants as to the provisions of said Acts other than said Act 152, notwithstanding that the plaintiffs appeared to be guilty of such delay and laches in the institution of this suit and in applying for such preliminary injunction as to preclude them from being entitled to the issuance of such injunction as to such provisions, even if they would otherwise be entitled to the same, and in not holding that the plaintiffs were so guilty.

22. Said Judge erred in so enjoining or causing to be enjoined the defendants, notwithstanding that it did not appear that the defendants or any of them were entitled in or [156] by these proceedings to question the constitutionality or validity of said Acts or regulations or of any of the provisions thereof.

23. Said Judge erred in so enjoining or causing to be enjoined the defendants, notwithstanding that it did not appear that the plaintiffs or any of them would suffer any direct injury or damage, from the enforcement of the provisions of said Acts or regu-

lations, other than or apart from judgments for the fees or sentences of fines for the violation of such provisions and in not holding that no such other direct injury or damage would so be suffered by the plaintiffs from such enforcement.

24. Said Judge erred in so enjoining or causing to be enjoined the plaintiffs as to the teachers employed in the schools mentioned in the bill of complaint, notwithstanding that the plaintiffs cannot properly bring or maintain said bill on behalf of any of said teachers, and in not holding that the plaintiffs could not properly so bring or maintain said bill on behalf of such teachers.

25. Said Judge erred as a matter of sound judicial discretion in not refusing so to enjoin or cause to be enjoined the plaintiffs under all the circumstances of this case as shown by the record and papers filed herein.

Dated at Honolulu, T. H., July 27, 1925.

(Sgd.) WILLIAM B. LYMER,
Attorney General, Territory of Hawaii.
FREAR, PROSSER, ANDERSON & MARX,
By (Sgd.) W. F. FREAR,
Attorneys for Defendants-Appellants. [157]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of

Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Citation on Appeal. Filed July 27, —25, at 9 o'clock and 30 Minutes A. M. Wm. L. Rosa, Clerk. By ———, Deputy Clerk. William B. Lymer, Attorney General, The Capitol, Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Strangenwald Bldg., Attorneys for Defendants-Appellants. [158]

CITATION ON APPEAL.

The United States of America,—ss.

To T. Tokushige, K. Tanaka, S. Sasaki, Members of Aiea Japanese Language School, an Unincorporated Association, F. Koochi, M. Nishigaya, Members of Chuo Gakuen, an Unincorporated Association, T. Hashimoto, K. Kinoshita, T. Nakano, Members of Ewa Shion Japanese Language School, an Unincorporated Association, M. Okomoto, K. Sakai, T. Enomoto, Members of Haleiwa Taisho Japanese Language School, an Unincorporated Association, Y. Yoshimura, T. Hokushin, I. Aoki, Members of Hawaii Japanese Girls' School, an Unincorporated Association, K. Kimura, M. Sakai, S. Kiyohawa, Members of Heeia Japanese Language School, an Unincorporated Association, K. Kanemaru, C. Nakata, Z. Toyama, Members of Kahaluu Japanese Language School, an Unincorporated Association, Kwanichi Miyaji, Nisaku Iwasaki, S.

Hishinuma, Members of Kailua Japanese Language School, an Unincorporated Association, M. Soranaka, E. Sato, N. Fukuda, Members of Kakaako Japanese Language School, an Unincorporated Association, U. Yamane, T. Tanikawa, D. Nakayama, Members of Kalihi Japanese Language School, an Unincorporated Association, K. Okimura, J. Watanabe, A. Nakano, Members of Manoa Japanese Language School, an Unincorporated Association, Y. Kobayashi, T. Hirata, S. Yamaguchi, Members of Moiliili Japanese Language School, an Unincorporated Association, T. Tsuji, F. Sakuma, I. Dewa, Members of Palama Gakuen, an Unincorporated Association, S. Uyeda, D. Kawamura, S. Nakashima, Members of Palama Japanese Language School, an Unincorporated Association, W. Eufuji, O. Hamamoto, K. Nakagawa, Members of Pearl City Japanese Language School, an Unincorporated Association, N. Obara, J. Kaya, S. Toyota, Members of Punaluu Japanese Language School, an Unincorporated Association, T. Kanno, T. Maeda, Y. Nakamura, Members of Puuloa Japanese Language School, an Unincorporated [159] Association, T. Yamaraki, Y. Tanouye, N. Koge, Members of Toyo Gakuen, an Unincorporated Association, U. Uranaka, K. Tokumoto, T. Ito, Members of Wahiawa Gakuen, an Unincorporated Association, G. Ginda, H. Yamashiro, K. Kawamura, Members of Waiahole Japa-

nese Language School, an Unincorporated Association, H. Miura, U. Matsuo, M. Okamoto, Members of Waialua Japanese Language School, an Unincorporated Association, K. Ibaraki, T. Murakami, N. Aoki, Members of Waikiki Japanese Language School, an Unincorporated Association, C. Koya, K. Yoko- Members of Hawaii Japanese High School, an Unincorporated Association, M. Tasaka, T. Iwanaga, Members of Fort Educational Home, an Unincorporated Association, T. Ikdea, T. Watanabe, T. Toshiyuki, Members of Central Kona Japanese Language School, an Unincorporated Association, C. Koya, K. Yokoyama, T. Okaji, Members of Hakalau Japanese Language School, an Unincorporated Association, T. Takaki, T. Gouchi, F. Uyehana, Members of Halawa Japanese Language School, an Unincorporated Association, G. Suzuki, J. Maeda, S. Okinishi, Members of Hiilea Japanese Language School, an Unincorporated Association, B. Takeda, Y. Hata, I. Ikeda, Members of Hilo Educational Home, an Unincorporated Association, B. Takeda, Y. Hata, I. Ikeda, Members of Hilo Japanese High School, an Unincorporated Association, T. Hara, F. Kusumoto, I. Isono, Members of Hilo Practical School, an Unincorporated Association, T. Yonemoto, K. Irie, K. Inokoji, Members of Honokaa Japanese Language School, an Unincorporated Association, A. Nanbu, K. Kinoshita, K. Shikasho, Members of Honomakau Japanese

Language School, an Unincorporated Association, C. Miyakawa, M. Tankguchi, K. Tokumaru, Members of Honomu Gakuen, an Unincorporated Association, M. Nakano, Yamada, S. Sasaki, Members of Honuapo Japanese Language School, an Unincorporated Association, K. Sakamoto, T. Endo, T. Higishi, Members of Hookena Japanese Language School, an Unincorporated Association, K. Okamoto, N. Nakagawa, T. Tankguchi, Members of Kaapahu Japanese Language School, an Unincorporated Association, G. Higashi, K. Monma, K. Nitta, Members of Kapoho Japanese Language School, an Unincorporated Association, T. Yoshida, Y. Hamasaki, H. Iura, Members of Kapulena Japanese Language School, an Unincorporated Association, Y. Maneki, T. Tanouye, K. Fujita, Members of Kaumana Japanese Language School, an Unincorporated Association, K. Ikeda, Y. Nagata, Members of Keauhou Educational Home, an Unincorporated Association, S. Uesugi, C. Kamimura, R. Furusho, Members of Kohala Japanese Language School, an Unincorporated Association, B. Taguchi, Y. Endo, T. Sugahara, Members of Kukaiau Japanese Language School, an Unincorporated Association, O. Hiraki, K. Naraki, S. Ito, Members of Kurtistown Japanese Language School, an Unincorporated Association, T. Yamamoto, A. Komatsu, S. Takaki, Members of Naalehu Japanese Language School, an Unincorporated Association, T. Takahata, C. Inouye,

I. Ariyoshi, Members of Napoopoo Japanese Language School, an Unincorporated Association, M. Shigaki, T. Matsuda, R. Maeyama, Members of Ninole Japanese Language School, an Unincorporated Association, S. Hirashima, M. Tamura, I. Hoshida, Members of Niulii Japanese Language School, an Unincorporated Association, T. Oto, A. Akiyama, I. Kasai, Members of Olaa 9-Mile Gakuen, an Unincorporated Association, K. Yamada, T. Yanagisawa, A. Nakamura, Members of Onamea Japanese Language School, an Unincorporated Association, K. Yamamoto, D. Miyagawa, H. Ohara, Members of Ookala Japanese Language School, an Unincorporated Association, T. Miyasaki, T. Hishiyama, B. Higa, Members of Paauilo Japanese Language School, an Unincorporated Association, T. Koike, K. Maeda, U. Murakami, Members of Pahala Educational Home, an Unincorporated Association, T. Marumoto, D. Tominaga, S. Kitsuki, Members of Pahala Japanese Language School, an Unincorporated Association, [160] J. Ozaki, A. Miyabara, M. Hayashikawa, Members of Pahoa Japanese Language School, an Unincorporated Association, R. Tamamoto, R. Suzuki, H. Nagai, Members of Papaaloa Japanese Language School, an Unincorporated Association, T. Morigaki, K. Sakamoto, J. Ishida, Members of Papaikou Educational Home, an Unincorporated Association, I. Kurogawa, M. Hayakawa, S. Kikuchi, Members of Papaikou

Japanese Language School, an Unincorporated Association, S. Ogawa, R. Morimoto, K. Otochi, Members of Piihonua Japanese Language School, an Unincorporated Association, S. Yoshida, K. Hayashida, H. Miyamoto, Members of Wailea Japanese Language School, an Unincorporated Association, K. Orimoto, J. Ogata, D. Uamaguchi, Members of Wainaku Kyoritsu Japanese Language School, an Unincorporated Association, R. Shimotsu, I. Fujikawa, Y. Murai, Members of Wainaku Jodo Mission Japanese Language School, an Unincorporated Association, M. Fujimitsu, T. Nomura, R. Kamebayashi, Members of Anahola Japanese Language School, an Unincorporated Association, S. Miura, I. Nakatsuka, K. Yokota, Members of Hanalei Japanese Language School, an Unincorporated Association, K. Okimoto, J. Miura, J. S. Teraoka, Members of Kapaa Educational Home, an Unincorporated Association, G. Ogata, T. Yoshimura, K. Urabe, Members of Kapaa Nissin Japanese Language School, an Unincorporated Association, N. Miyasaki, K. Ogata, I. Ariizumi, Members of Kealia Educational Home, an Unincorporated Association, T. Shimatsu, S. Togioka, S. Yamashita, Members of Kekaha Japanese Language School, an Unincorporated Association, T. Yoshimoto, E. Saiki, M. Saiki, Members of Kilauea Japanese Language School, an Unincorporated Association, S. Muronaka, S. Ebata, S. Matsumoto, Members of

Koloa Japanese Language School, an Unincorporated Association, K. Okinaga, T. Yoshi, K. Noribe, Members of Koolau Japanese Language School, an Unincorporated Association, J. Mashita, M. Matsumura, M. Kunioka, Members of Lawai Japanese Language School, an Unincorporated Association, T. Ueda, M. Kawata, N. Akazawa, Members of Makaweli Japanese Language School, an Unincorporated Association, J. Matsui, S. Hagashi, N. Kawamura, Members of Makaweli Camp 2 Japanese Language School, an Unincorporated Association, K. Muranaka, G. Tokunaga, S. Oshiro, Members of Mana Japanese Language School, an Unincorporated Association, M. Tanaka, C. D. Akinori, S. Yoshimasu, Members of Haiku Japanese Language School, an Unincorporated Association, M. Hopiuchi, Y. Satsuma, M. Toma, Members of Honokowai Japanese Language School, an Unincorporated Association, T. Kurakake, K. Miho, H. Kinoshita, Members of Kahului Japanese Language School, an Unincorporated Association, U. Higa, T. Hanzawa, J. Izawa, Members of Kaupakalua Japanese Language School, an Unincorporated Association, I. Fujibayashi, K. Nagata, K. Okamoto, Members of Kula Japanese Language School, an Unincorporated Association, J. Murata, J. Sato, G. Masuda, Members of Lahaina Dowa Educational Home, an Unincorporated Association, I. Toyama, K. S. Matsui, K. Umemoto, Members of Makawao Japanese Language

School, an Unincorporated Association, S. Kawashima, M. Takahashi, S. Kurisu, Members of Olowalu Japanese Language School, an Unincorporated Association, S. Chikamori, S. Watanabe, Y. Fukuroku, Members of Peahi Japanese Language School, an Unincorporated Association, K. Watanabe, K. Takahama, S. Yamasaki, Members of Wahikuli Japanese Language School, an Unincorporated Association, M. Uno, H. Kaneshina, T. Hirai, Members of Waihee Japanese Language School, an Unincorporated Association, R. Sato, S. Furukawa, T. Sonoda, Members of Waikapu Japanese Language School, an Unincorporated Association, G. Kawahara, K. Yamamoto, Y. Yoshida, Members of Wailuku Educational Home, an Unincorporated Association, GREETING:

You and each of you are hereby cited and admonished to [161] be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, within thirty days from the date hereof, pursuant to an appeal filed by the above-named defendants in the clerk's office of the District Court of the United States for the District and Territory of Hawaii, in the above-entitled case, to show cause, if any there be, why the order and the allowance of the preliminary injunction in the said appeal mentioned should not be corrected, why said order should not be reversed, why said preliminary injunction should not be dissolved, and why

speedy justice should not be done to the parties on that behalf.

WITNESS the Honorable J. T. DeBOLT, Judge of the said District Court, this 27th day of July, in the year of our Lord one thousand nine hundred and twenty-five.

J. T. DeBOLT,
District Judge.

Service and receipt of copy of the foregoing citation is acknowledged this 27th day of July, 1925.

LIGHTFOOT & LIGHTFOOT,
WILLSON C. MOORE,
Attorneys for Plaintiffs-Appellees. [162]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney-General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Appeal Bond. Filed July 27, —25, at 9 o'clock and 30 minutes A. M. (Sgd.) Wm. L. Rosa, Clerk. William B. Lymer, Attorney General of Hawaii, The Capitol, Honolulu, T. H. Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald Building, Honolulu, T. H., Attorneys for Defendants-Appellants. [163]

APPEAL BOND.

KNOW ALL MEN BY THESE PRESENTS That we, Wallace R. Farrington, Governor of the Territory of Hawaii, and William B. Lymer, Attorney General of the Territory of Hawaii, are held and firmly bound unto each and all of the plaintiffs in the above-entitled cause in the sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said plaintiffs or their respective executors, administrators or assigns, for the payment of which well and truly to be made we bind ourselves and our respective heirs, executors and administrators jointly and severally firmly by these presents.

THE CONDITION of this obligation is such that whereas the above-named defendants have taken an appeal from the District Court of the United States in and for the District and [164] Territory of Hawaii to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order dated and entered in said cause July 21, 1925, and to dissolve the preliminary injunction entered in said cause on said date.

NOW, THEREFORE, if the above-named defendants shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

WITNESS the hands and seals of said WALLACE R. FARRINGTON, Governor, and WILL-

IAM B. LYMER, Attorney General, this 27th day of July, 1925.

(Sgd.) W. R. FARRINGTON,
Governor of Hawaii.

(Sgd.) WILLIAM B. LYMER,
Attorney General of Hawaii.

Approved:

(Sgd.) J. T. DeBOLT,
District Judge.

Approved:

(S.) J. LIGHTFOOT,
Atty. for Plaintiffs. [165]

In the District Court of the United States in and for the District and Territory of Hawaii. In Equity. Bill for an Injunction. Equity No. 278. T. Tokushige, et al., Plaintiffs-Appellees, vs. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and Willard E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Defendants-Appellants. Praecipe for Transcript of Record. Filed July 27, —25, at 9 o'clock and 30 minutes A. M. (Sgd.) Wm. L. Rosa, Clerk. William B. Lymer, Attorney General of Hawaii, The Capitol, Honolulu, T. H. Frear, Prosser, Anderson & Marx, W. F. Frear, 507 Stangenwald Building, Honolulu, T. H., Attorneys for Defendants-Appellants. [166]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk:

Please prepare and certify a transcript of the record in the above-entitled case and include therein the following:

1. Plaintiffs' bill of complaint, including copies of foreign language school law and regulations attached thereto.
2. Temporary restraining order.
3. Defendants' motion to dissolve or modify restraining order, including affidavits of William B. Lymer and Henry B. Schwartz attached thereto.
4. Notice of presentation of motion to dissolve or modify restraining order.
5. Plaintiffs' motion for allowance of preliminary injunction, with attached affidavit of T. Iwanaga and notice of presentation of motion.
6. Defendants' objections to allowance of preliminary injunction, with affidavits of William B. Lymer and Henry B. Schwartz attached hereto.
7. Affidavit of J. Lightfoot in support of motion for preliminary injunction.
8. Plaintiffs' motion to strike from the record certain portions of the affidavit of Henry B. Schwartz. [167]
9. Order allowing plaintiffs' motion to strike portions of Henry B. Schwartz's affidavit, overruling defendants' objections to granting

preliminary injunction and for granting plaintiff's motion for preliminary injunction.
10. Preliminary injunction.
11. Preliminary injunction bond.
12. Defendants' exceptions to order and to issuance of preliminary injunction.
12a. Statement by respondents.
13. Petition for appeal.
14. Assignment of errors on appeal.
15. Citation on appeal.
16. Appeal bond.
17. Praecipe for transcript of record on appeal.
18. Clerk's minutes.

—and file said transcript with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Honolulu, T. H., July 27, 1925.

(S.) WILLIAM B. LYMER,
Attorney General, Territory of Hawaii.

FREAR, PROSSER, ANDERSON & MARX,

(S.) By W. F. FREAR,
Attorneys for Defendants-Appellants.

Service and receipt of copy of the foregoing praecipe is acknowledged this 27th day of July, 1925.

LIGHTFOOT & LIGHTFOOT,
(S.) WILLSON C. MOORE,
Attorneys for Plaintiffs-Appellants. [168]

ORDER OF CONTINUANCE FOR HEARING ON MOTION TO DISSOLVE OR MODIFY RESTRAINING ORDER.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Wednesday, June 24, 1925.

(Title of Court and Cause.)

Personally appeared Mr. J. Lightfoot, of the firm of Lightfoot & Lightfoot, one of the counsel for the plaintiffs above named, and also came Mr. W. B. Lymer, the Attorney General of the Territory of Hawaii, and Mr. W. F. Frear of the firm of Frear, Prosser, Anderson and Marx, one of counsel for the respondents herein, and this case was called for hearing on motion to dissolve or modify restraining order. Upon motion of Mr. Lightfoot, with consent of counsel for the respondents, it was by the Court ordered that this case be continued to June 25, 1925, at 2 o'clock P. M. for hearing on said motion to dissolve. [169]

Proceedings—Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Thursday, June 25, 1925.

(Title of Court and Cause.)

HEARING.

On this day came Messrs. J. Lightfoot of the

firm of Lightfoot & Lightfoot and J. B. Poindexter, counsel for the plaintiffs above named and also came Messrs. W. F. Frear, of the firm of Frear, Prosser, Anderson & Marx and W B. Lymer, Attorney of the Territory of Hawaii, counsel for the defendants herein, and this case was called for hearing on motion to dissolve the temporary restraining order. Mr. Frear presented argument until the time for adjournment arrived, when it was by the Court ordered that this case be continued to June 26, 1925, at 2 o'clock P. M., for further argument. [170]

Proceedings—Further Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Friday, June 26, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came Messrs. J. Lightfoot, of the firm of Lightfoot & Lightfoot, and J. B. Poindexter, counsel for the plaintiffs above named, and also came Messrs. W. F. Frear, of the firm of Frear, Prosser, Anderson & Marx and W. B. Lymer, Attorney General of the Territory of Hawaii, counsel for the respondents herein, and this cause was called for hearing on motion to dissolve the temporary restraining order. After ar-

gument by respective counsel, the Court ordered that this case be continued to Monday, June 29, 1925, at 2 o'clock P. M. [171]

Proceedings—Further Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Monday, June 29, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the plaintiffs by their counsel, Messrs. Lightfoot and Poindexter, and also appeared the counsel for the respondents, Mr. W. F. Frear and Miss M. K. Ashford, and this case was called for hearing on the motion to dissolve the temporary restraining order. Mr. Lightfoot addressed the Court continuously until time for adjournment. The time for adjournment having arrived, it was by the Court ordered that this case be continued to Tuesday, June 30, 1925, at 9 o'clock A. M. for further hearing. [172]

Proceedings—Further Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Tuesday, June 30, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the plaintiffs by their counsel, Messrs. Lightfoot and Poindexter, and also appeared the counsel for the respondents, Mr. W. F. Frear, Mr. W. B. Lymer, and Miss M. K. Ashford, and this case was called for hearing on the motion to dissolve the temporary restraining order. Mr. Lightfoot addressed the Court, continuing his argument of the previous day. Mr. Frear objected to further argument by the plaintiffs' counsel, and asked the Court to determine whether Section 266 of the Judicial Code applied. The Court ordered Mr. Lightfoot to proceed. Thereafter, the time for adjournment having arrived, it was by the Court ordered that this case be continued to Wednesday, July 1, 1925, at 1 o'clock P. M. [173]

Proceedings—Further Argument on Motion to Dissolve or Modify Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Wednesday, July 1, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the plaintiffs by their counsel, Messrs. Lightfoot and Poindexter, and also appeared the counsel for the respondents, Mr. W. F. Frear, and Miss M. K. Ashford, and this case was called for hearing on the motion to dissolve the temporary restraining order. Mr. Lightfoot continued his address to the Court, concluding at 3:30 o'clock, when Mr. Poindexter took up the argument, and continued. Thereafter, the time for adjournment having arrived, it was by the Court ordered that this case be continued to Thursday, July 2, 1925, at 9 o'clock A. M. [174]

Proceedings—Order Granting Motion to Dissolve Restraining Order.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Thursday, July 2, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the plaintiffs by their counsel,

Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Messrs. Frear and Lymer, and Miss M. K. Ashford, and this case was called for hearing on the motion to dissolve the temporary restraining order. Mr. Poindexter continued to address the Court until 11:20. The petitioners then submitted to the Court and asked that the temporary restraining order be continued in force until the question as to the temporary injunction be disposed of, and that the motion to dissolve the temporary restraining order be denied. Mr. Frear then addressed the Court until noon, when the Court ordered that this case be continued at 1:30 o'clock P. M. At 1:30 o'clock P. M. Mr. Frear resumed his argument and continued. Thereafter the Court granted the motion to dissolve the temporary restraining order upon the ground that it did not comply with Sections 1243a, 1243b, and 1243c, of the United States Compiled Statutes of 1918.

The Court then ordered that the motion for a temporary injunction be set down for hearing at 9 o'clock A. M. on Tuesday, July 7, 1925. [175]

Order of Continuance.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Tuesday, July 7, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Messrs. Lymer and Frear, and this case was called for hearing on motion for a preliminary injunction. Nothing further being presented, the Court ordered that this case be continued to Wednesday, July 8, 1925, at 9 o'clock A. M. [176]

Proceedings—Order Allowing Motion to Strike and Preliminary Injunction.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Wednesday, July 8, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Messrs. Lymer and Frear, and Miss M. K. Ashford, and this case was

called for hearing on motion for a preliminary injunction. Thereupon Mr. Lightfoot filed a motion to strike from the record certain portions of the affidavit of Henry B. Schwartz, filed in support of defendant's objection to allowance of a preliminary injunction, which motion, after considerable argument by respective counsel, was granted by the Court. The counsel for the respondents then entered exception to said ruling by the Court. Thereafter the Court granted the motion on behalf of the plaintiffs for allowance of a preliminary injunction, to which ruling counsel for the respondents entered exception. The Court then ordered that the plaintiffs be required to give a bond as required by Section 1243b in the United States Compiled Statutes of 1916, designated in Volume II to cover the costs and damages as in the statute mentioned, which the Court construed to be all the fees accruing for the current year (from September 1, 1924, to September 1, 1925) in this matter, and said bond was fixed in the sum of $12,500. The Court then ordered that this case be continued to Tuesday, July 14, 1925, at 9 o'clock A. M. [177]

Order of Continuance.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Tuesday, July 14, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Mr. W. F. Frear, and Miss M. K. Ashford, and this case was called for hearing. Thereafter Mr. Lightfoot presented a proposed order, not filing same for the consideration of the opposing counsel and the Court, but the matter was continued by the Court at the request of counsel, until Friday, July 17, 1925, at 9 o'clock A. M. for final determination. [178]

Order of Continuance.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Friday, July 17, 1925.

(Title of Court and Cause.)

HEARING (CONTINUED).

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came

the counsel for the respondents, Mr. W. F. Frear, and Mr. Lymer, the Attorney General, and Miss M. K. Ashford, and this case was called for further hearing. After considerable argument by all counsel, the matter was continued to Tuesday, July 21, 1925, at 9 o'clock A. M. [179]

ACKNOWLEDGMENT OF SERVICE OF TEMPORARY INJUNCTION AND EXCEPTIONS.

From the Minutes of the U. S. District Court, Territory of Hawaii.

Tuesday, July 21, 1925.

(Title of Court and Cause.)

On this day came the counsel for the plaintiffs, Messrs. Lightfoot and Poindexter, and also came the counsel for the respondents, Mr. W. F. Frear and Miss M. K. Ashford. In open court counsel for the respondents acknowledged service of a temporary injunction, and also entered exceptions to the various rulings of the Court and to the granting of the temporary injunction. [180]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States Dis-

trict Court for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to ——, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and I further certify that I am attaching hereto the original citation and that the cost of the foregoing transcript of record is $69.95/100, and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 7th day of August, A. D. 1925.

[Seal] WM. L. ROSA,
Clerk, U. S. District Court, Territory of Hawaii.
[181]

[Endorsed]: No. 4667. United States Circuit Court of Appeals for the Ninth Circuit. Wallace R. Farrington, Governor of the Territory of Hawaii, William B. Lymer, Attorney General of the Territory of Hawaii, and William E. Givens, Superintendent of Public Instruction of the Territory of Hawaii, Appellants, vs. T. Tokushige et al., Appellees. Transcript of Record. Upon Appeal

from the United States District Court for the Territory of Hawaii.

Filed August 17, 1925.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Filed September 15, 1925. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

No. 4667

United States

Circuit Court of Appeals

For the Ninth Circuit.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE TERRITORY OF HAWAII.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the 12th day of November, in the year of our Lord one thousand nine hundred and twenty-five. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge Presiding; Honorable FRANK H. RUDKIN, Circuit Judge; Honorable WALLACE McCAMANT, Circuit Judge.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD E. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

ORDER OF SUBMISSION.

ORDERED appeal in the above-entitled cause argued by Mr. Joseph Lightfoot, counsel for the appellees, and submitted on brief on file on behalf of the appellants—and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the 22d day of March, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD F. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Hon. Wm. B. Gilbert and Frank H. Rudkin, Circuit Judges, before whom (together with Hon. Wallace McCamant, C. J.) the cause was heard, ORDERED that the typewritten

opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk, and that a decree be filed and recorded in the minutes of this court in above cause in accordance with the opinion of this Court.

By direction of the Honorable Wallace McCamant, C. J., ORDERED that the dissenting opinion, written by him, and this day rendered, be forthwith filed by the Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, et al.,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Upon Appeal from the United States District Court for the Territory of Hawaii.

Before GILBERT, RUDKIN, and McCAMANT, Circuit Judges.

RUDKIN, Circuit Judge.—The present appeal involves the validity of the Foreign Language School Act of the Territory of Hawaii. The act

in question defines the term, foreign language school, as any school conducted in any language other than the English or Hawaiian language, except Sabbath schools, and its more prominent and questionable features are the following:

No such school shall be conducted in the territory unless under a written permit therefor from the Department of Public Instruction, nor unless the fee therefor shall have been paid as therein provided, and such permit shall be kept exposed in a prominent place at the school so as to be readily seen and read by visitors thereat. The fee prescribed is one dollar per pupil on the estimated average attendance of pupils at the school during the period during which such school was conducted during the next preceding school year, or if such school was not conducted during any part of such preceding school year, then at the same rate at the estimated average attendance during the school year or unexpired part thereof in question, in which latter case the amount shall be adjusted to conform to the estimated average attendance during such year or part thereof. The amount of the fee shall be estimated and determined by the Department from such information as it may have, and shall be payable by any person, persons or corporation conducting or participating in conducting such school; and all officers, teachers and all members of any committee or governing board of any such school, and in case such school is conducted by or for a corporation or voluntary association or other group of persons, all members or

associates of such corporation, association or group shall be deemed to be participants in conducting such school. Provision is then made for the collection of the fees by suit, but that provision is not deemed material here. All permits must be renewed annually on the first day of September of each year and a similar fee must be paid, provided the department shall not be required to renew a permit for conducting any foreign language school, in the conducting of which there has been a violation of the terms of the Act. All fees collected by the department under the Act shall be paid over to the treasurer of the territory and the moneys so paid are appropriated to the department to be expended in enforcing and carrying out its provisions. If at any time the funds at the disposal of the department from fees previously collected or from royalties, commissions or other moneys received in connection with the publication or sale of foreign language school text-books shall make it possible to fully and effectively carry out the provisions of the Act with the permit fees payable by the schools based on a lower rate than one dollar per pupil, the department is authorized to make such a reduction in that rate as it may deem reasonable and expedient. Every person conducting a foreign language school shall, not later than June 15, of each year, file with the department on forms prescribed or furnished by it a sworn list of all pupils in attendance at such school during the current school year, showing the name, sex, parents or guardians, place of birth and residence of each child. No person shall teach

1898

in a foreign language school unless and until he shall have first applied to and obtained a permit so to do from the department and this shall also be construed to include persons exercising or performing administrative powers at any school. No permit to teach in a foreign language school shall be granted unless and until the department is satisfied that the applicant for the same is possessed of the ideals of democracy; knowledge of American history and institutions, and knows how to read, write and speak the English language. It is the declared object of the Act to fully and effectively regulate the conducting of foreign language schools and the teaching of foreign languages, in order that the Americanism of the pupils may be promoted and the department is directed to carry out the provisions of the Act in accordance with its spirit and purpose. Before issuing a permit to conduct a foreign language school or to teach in any such school the department shall require the applicant for such permit to sign a pledge that the applicant will, if granted a permit to teach in such a school, abide by and observe the terms of the Act, and the regulations and orders of the department, and will, to the best of his ability, so direct the minds and studies of pupils in such schools as will tend to make them good and loyal American citizens, and will not permit such students to receive instructions in any way inconsistent therewith. No foreign language school shall be conducted in the morning before the school hours of the public schools or during the hours while the public schools are in

session, nor shall any pupil attend any foreign language school for more than one hour each day, nor exceeding six hours in any one week, nor exceeding thirty-eight weeks in any school year; provided, however, the department may in its discretion and with the approval of the Governor, modify this provision. The department shall have full power from time to time to prescribe by regulations the subjects and courses of study of all foreign language schools, and the entrance and attendance prerequisites or qualifications of education, age, school attainment, demonstrated mental capacity, health and otherwise, and the text-books used in any foreign language school. Until otherwise provided by the department, the following regulations are in effect: Up to September 1, 1923, every pupil shall have first satisfactorily completed the American public school first grade, or a course equivalent thereto, before attending or being allowed to attend any foreign language school. Beginning September 1, 1923, and thereafter, every pupil shall have satisfactorily completed the American public school first and second grades, or courses equivalent thereto, before attending or being allowed to attend any foreign language school. Beginning September 1, 1923, and thereafter, for grades one, two and three; and beginning September 1, 1924, and thereafter, for grades four and above; all new text-books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English and shall contain, as far as practicable,

English equivalents for foreign words and idioms. The department is authorized to prepare, or cause to be prepared, or procure or arrange for procuring suitable text-books for the teaching of foreign languages in the foreign language schools and to enter into an agreement or agreements for the publishing and sale of the same. All royalties, commissions and moneys received by or on behalf of the department in connection with the publication or sale of such text-books shall be paid over to the treasurer of the territory and shall be appropriated to the department to be expended for the purposes of the Act. In every foreign language school no subjects of study shall be taught, nor courses of study followed, nor entrance, nor attendance qualifications required, nor text-books used, other than as prescribed or permitted by the department. The latter regulations were only effective until superseded in whole or in part by others made by the department, and some such were thereafter made, but they are not deemed material to our present inquiry. The department has power to appoint one or more inspectors of foreign language schools and to pay the salary and necessary expenses therefor; such inspectors and other duly authorized agents of the department shall have the right freely to visit such foreign language schools and to inspect the buildings, equipment, records and teaching thereof and the text-books used therein. If the department shall at any time become satisfied that any holder of a permit to conduct a foreign language school or to teach therein does not possess

the qualifications required by the Act, or shall have violated or failed to observe any of the provisions of the Act or of the regulations or orders of the department, the department may then and thereupon revoke the permit theretofore granted and the same shall thereupon be and become null and void. Any person who shall conduct or participate in conducting a foreign language school or who shall teach in a foreign language school contrary to the provisions of the Act, or who shall violate or participate in violating any of the provisions thereof, or any of the regulations or orders of the department, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed $25, and each day's violation shall be deemed a separate offense. The Act further provides that if any section or part thereof is declared unconstitutional or invalid by the courts, the same shall not affect the validity of the Act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid.

There are 163 foreign language schools in the territory affected by the Act. Nine of these are conducted in the Korean language; seven in the Chinese language, and the remainder in the Japanese language. The plaintiffs are members of numerous voluntary unincorporated associations conducting foreign language schools on behalf of the Japanese. The total number of such schools is 146; the schools are owned and conducted by upwards of 5,000 persons; the property holdings ag-

gregate $250,000; the number of pupils enrolled is 20,000, and the number of teachers employed is 300. The defendants are the Governor of the territory, the Attorney General of the territory, and the Superintendent of Public Instructions of the territory.

After a hearing the Court below granted a temporary injunction restraining the defendants, their deputies, assistants, subordinates, and each and every of them, until the further order of the Court, from requiring the plaintiff, their agents, servants or teachers, to secure permits to conduct foreign language schools as required by the Act or any permit whatever; from requiring the plaintiffs, their agents, servants or teachers to pay the fees required by law, or to pay any fee whatsoever for conducting foreign language schools; from requiring the plaintiffs, their agents, servants or teachers to make the reports required of them; from requiring the plaintiffs, their agents, servants or teachers to give the pledges referred to in the Act, or any pledge whatever, affecting their duties in reference to foreign language schools; from requiring the plaintiffs, their agents, servants or teachers to conform to any regulation or regulations prescribed by the Department of Public Instruction relating to the subject and courses of study and the qualifications of education, age, school attainment, demonstrated mental capacity, and otherwise, of the pupils attending such foreign language schools, and from requiring plaintiffs, their agents, servants or teachers to use the text-

books prescribed by the department. The defendants were further enjoined and restrained, until the further order of the Court, from in any manner enforcing against the plaintiffs, their agents, servants or teachers, the pains, penalties and forfeitures provided in the Act, or from in any manner arresting or causing to be arrested in civil or criminal proceedings, the plaintiffs, their agents, servants or teachers on account of any alleged violation by them or either of them of the terms or provisions of the Act, and from in any manner interfering with the property, business and affairs of the plaintiffs for or on account of any such violation.

The appeal now before this Court is from that decree. If the legislation complained of is unconstitutional, the right of the appellees to maintain this suit is, in our opinion, not open for question. Pierce vs. Society of Sisters, 268 U. S. 510. The right of the pupils, against whom the legislation is directed, to acquire a knowledge of the Japanese language and the right of others to teach them that language is equally beyond question. Meyer vs. Nebraska, 262 U. S. 390; Bartels vs. Iowa, Id. 404.

It only remains to consider, then, whether the legislature can be upheld and sustained as a proper exercise of the police power of the territory, and in that connection we must remember that we are now concerned with the public school system established by the territory and maintained at public expense. These foreign language schools

are in no sense a part of that system, as they are maintained through private enterprise, and attendance upon them is not compulsory. The children who attend them are compelled to and do attend the public schools and fully discharge all their duties and obligations in that regard, and when they have done this, we take it for granted that they have an undoubted right to acquire a knowledge of foreign languages, music, painting, drawing and such other accomplishments, not inimicable to good order and good morals, as their parents or guardians see fit to bestow upon them.

In Berea College vs. Kentucky, 211 U. S. 45, a majority of the court held that a state might withhold from its corporations, privileges and immunities which it could not constitutionally withhold from individuals, and affirmed the judgment of the Supreme Court of the state. In a dissenting opinion, conflicting in nowise with the opinion of the majority, Mr. Justice Harlan said:

> "The capacity to impart instruction to others is given by the Almighty for beneficent purposes and its use may not be forbidden or interfered with by Government—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property—especially, where the services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond question,

part of one's liberty as guaranteed against hostile state action by the Constitution of the United States. This Court has more than once said that the liberty guaranteed by the Fourteenth Amendment embraces 'the right of the citizen to be free in the enjoyment of his faculties,' and 'to be free to use them in all lawful ways.' * * * If pupils, of whatever race —certainly, if they be citizens—choose the consent of their parents or voluntarily to sit in a private institution of learning while receiving instruction which is not in its nature harmful or dangerous to the public, no Government, whether Federal or state, can legally forbid their coming together, or being together temporarily, for such an innocent purpose."

Comprehensive and all pervading as the police power is, there are certain rights and certain relations beyond its scope. One of these is the right of a parent to educate his own child in his own way, at least beyond the requirements of the local law. Conceding then, as we must, that the appellees have a right to maintain these foreign language schools; that teachers have a right to teach therein, and that pupils have a right to be taught, how can these comprehensive regulations and prohibitions be sustained. Before obtaining a permit to teach, the applicant must satisfy a territorial officer that he is possessed of the ideals of democracy, a knowledge of American history and institutions, and knows how to read, write and speak

the English language. A knowledge of the foreign language is not a prerequisite. He must pledge himself to abide by and observe the terms of the Act and such regulations and orders as the department may see fit to make, and he and his pupils must use only such text-books as are compiled and sold by legislative authority. He must so direct the minds and studies of his pupils as will tend to make them good and loyal American citizens, and this he must accomplish after the pupil has completed the second grade in the common schools, and within one brief hour each day, for not exceeding six days a week and thirty-eight weeks in the year. In other words, in a school conducted primarily for the teaching of a foreign language the pupils must take a course in Americanism; a course not required of any other class of citizens or students. We feel quite safe in saying that if such a system of regulations were enforced by one of our American commonwealths against an American college in which foreign languages are taught, it would shock the conscience of mankind. An attempt is made to justify the Act, however, because of the peculiar conditions prevalent on the Islands. They have a large Japanese population there, and it is said that within the next fifteen years a majority of the electorate will be American citizens of Japanese extraction. It is further said that the Japanese do not readily assimilate with other races; that they still adhere to their own ideals and customs and are still loyal to their Emperor. It is a matter of common knowledge that the Japanese do not readily

assimilate with other races and especially with the white race. This is in part a matter of choice and in part a matter of necessity, because one cannot assimilate alone. No doubt, the Japanese tongue will be spoken on the Islands for generations yet to come, and no doubt the Japanese will be slow to give up their customs and their ideals, and we took the Islands *cum onere* and extended the Constitution of the United States there, and every American citizen has a right to invoke its protection. You cannot make good citizens by oppression or by a denial of constitutional rights, and we find no such conditions there as will justify a departure from the fundamental principles of constitutional law. If the power to so legislate is once conceded, the time and manner of its exercise is largely a matter of legislative discretion over which the courts have little or no control. An attempt was made to justify the foreign language school laws of Nebraska, Iowa and Ohio on similar grounds, but the attempt was unsuccessful.

> "It is said the purpose of the legislation was to promote civil development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and become the mother tongue of all children reared in this state.' It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign

atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.

"That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak our language as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means." Meyers vs. Nebraska, *supra.*

For these reasons we are of opinion that the Act in question, in both spirit and purpose, abridges the privileges and immunities of citizens of the United States, and deprives them of liberty and property without due process of law.

The decree is affirmed.

DISSENTING OPINION.

McCAMANT, Circuit Judge.—I am unable to concur in the conclusion that the statute in question is wholly void. In my opinion the injunction should not go further than to restrain the defendants from interfering with the patronage of appellees' schools by any pupils desiring to attend them and from requiring appellees to use only the text-

books prescribed by the Department of Public Instruction.

[Endorsed]: Opinion and Dissenting Opinion of McCamant, C. J. Filed Mar. 22, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD F. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Territory of Hawaii.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Territory of Hawaii, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellees and against the appellants.

It is further ordered, adjudged and decreed by this Court, that the appellees recover against the appellants for their costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered March 22, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4667.

WALLACE R. FARRINGTON, Governor of the Territory of Hawaii, WILLIAM B. LYMER, Attorney General of the Territory of Hawaii, and WILLARD F. GIVENS, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

T. TOKUSHIGE et al.,

Appellees.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and two (202) pages, numbered from and including 1 to and including 202, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the

originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 10th day of June, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4160)

originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 10th day of June, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4160)